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# QUESTION OF THE HUMAN RIGHTS OF All PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

## Decisions adopted by the Working Group on Arbitrary Detention

The present document contains several decisions adopted by the Working Group on Arbitrary Detention at its seventh and eighth sessions, held in September and December 1993 respectively, which for technical reasons could not be reproduced in the Working Group's report to the Commission on Human Rights at its fiftieth session (E/CN.4/1994/27), as well as the decisions adopted by the Working Group at its ninth session in May 1994. All the statistical data concerning these decisions are included in the Working Group's annual report to the Commission on Human Rights at its fifty-first session (E/CN.4/1995/31).

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Decision No. 43/1993 (People's Republic of China)

Communication addressed to the Government of the People's Republic of China on 22 February 1993.

Concerning: Huang Shixu and Lu Gang, on the one hand, and the People's Republic of China, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. With a view to taking a decision the Working Group considers if the cases in question fall into one or more of the following three categories:

I. Cases in which the deprivation of freedom is arbitrary, as it manifestly cannot be linked to any legal basis (such as continued detention beyond the execution of the sentence or despite an amnesty act, etc.); or

II. Cases of deprivation of freedom when the facts giving rise to the prosecution or conviction concern the exercise of the rights and freedoms protected by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights; or

III. Cases in which non-observance of all or part of the international provisions relating to the right to a fair trial is such that it confers on the deprivation of freedom, of whatever kind, an arbitrary character.

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the People's Republic of China. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The facts, in the absence of a response from the Chinese Government, suggest that Huang Shixu aged 30, from Tianjin, was arrested in early September 1992 as he was the head of the autonomous workers' movement in Tianjin. He was earlier detained in 1989 and released in the summer of 1992. Lu Gang, aged 30, also from Tianjin, was arrested in mid-September 1992. He

is also said to have been detained earlier in 1989 and released in the summer of 1992. He had been detained for his activity in the autonomous workers' movement in Tianjin. The facts further suggest that both Huang Shixu and Lu Gang were arrested after being interviewed by a French Television team. In the interview in August 1992 they reflected upon their experiences in prison.

6. That both Huang Shixu and Lu Gang were arrested without a warrant and for their work in the automonous workers' movement in Tianjin makes their detention arbitrary. That they have thus far neither been charged or tried makes their continued detention arbitrary. Their detention is in clear violation of articles 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 19, and 22 of the International Covenant on Civil and Political Rights.

7. In the light of the above the Working Group decides:

> The detention of Huang Shixu and Lu Gang is declared to be arbitrary being in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights, and articles 9, 19 and 22 of the International Covenant on Civil and Political Rights and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Huang Shixu and Lu Gang to be arbitrary, the Working Group requests the Government of the People's Republic of China to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 September 1993.

Decision No. 44/1993 (People's Republic of China)

Communication addressed to the Government of the People's Republic of China on 22 February 1993.

Concerning: Di Dafeng, Zu Guogiang, Mao Wenke (b), Zang Jianjun and Zhao Chingjian, on the one hand, and the People's Republic of China, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the People's Republic of China. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The facts, in the absence of a response from the Chinese Government, suggest that Di Dafeng, Zu Guogiang, Mao Wenke, Zang Jianjun and Zhao Chingjian have all been detained for their pro-democracy views and activities. Qi Dafeng aged 30, from Quinglongiao (Beijing) was arrested on 1 September 1992 at the residence of Shen Tong in Beijing. He had earlier been detained for 18 months allegedly for his pro-democracy activity in 1989 but was released in 1991. Zu Guogiang, a young man from Shenyang, Liauning Province, was allegedly arrested on 17 September 1992 by personnel of the Hunan Public Security Bureau at the Hunan University Campus. He is believed to be detained in a detention centre in Hunan Province. Mao Wenke, aged around 35, and an active member of the Christian Democrat Organisation, from Xiangtan, Hunan Province, was allegedly arrested on 17 September 1992 by personnel of the Xiangtan Public Security Bureau, at her residence. Her present place of detention is not known. Qi Dafeng, Zu Guogiang and Mao Wenke allegedly had links with Shen Tong, a dissident student and a pro-democracy activist. Zhang Jianjun and Zhao Chiugjiain, aged 27, are themselves activists in the pro-democracy and human rights movement. They were arrested at the end of September 1992 in Guangzhon, Guangdong Province, allegedly for their non-violent activity.

6. The fact that all the five persons detained were arrested without a warrant and continue to be in detention without charge and without bringing them to trial reflects upon the arbitrary nature of their detention. Except in the case of Qi Dafeng, there is no indication where the others are presumably in detention. All of them are detained without access to their families and without access to any lawyer.

7. The arbitrary nature of their arrest without a warrant is a clear violation of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. Their continued detention without charge or trial is a further violation of the same rights. Their pro-democracy affiliation and activities being the reason for their arrest is a violation of article 19 of the Universal Declaration of Human Rights and article 20 of the International Covenant on Civil and Political Rights.

8. In the light of the above the Working Group decides:

> The detention of Di Dafeng, Zu Guogiang, Mao Wenke, Zang Jianjun and Zhao Chingjian is declared to be arbitrary being in contravention of articles 9 and 19 of the Universal Declaration of Human Rights, and articles 9 and 20 of the International Covenant on Civil and Political Rights and falling within categories II and III of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of Di Dafeng, Zu Guogiang, Mao Wenke, Zang Jianjun and Zhao Chingjian to be arbitrary, the Working Group requests the Government of the People s Republic of China to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 30 September 1993.

Decision No. 51/1993 (Yemen)

Communication addressed to the Government of Yemen on 3 August 1993.

Concerning: Mansur Muhammad Ahmad Rajih, on the one hand, and the Republic of Yemen, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case within ninety (90) days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Yemen. The Working Group transmitted the reply of the Government to the source and received their comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned Mansur Muhammad Ahmad Rajih, a 34 year old writer and poet, the former President of the Yemeni Student Association and a former Secretary General of the Organisation of Arab Students. In January 1983 he was reportedly arrested upon his return from Lebanon where he was a student, in the village of Tumayrin in the Province of Ta'iz, by the members of the al-Amn al-Watani (National Security Forces). He was allegedly held without charge or trial for six months, then released and eight days later re-arrested in his village Tumayrin. For nine months thereafter, he was held without charge. Thereafter he was tried for the murder of a man from his village and sentenced to death. The death sentence was imposed by the Court of First Instance in Ta'iz in 1986 but was pending ratification by the Presidential Council of the new Republic of Yemen. Presently, Mr. Rajih was reportedly being held in the Shabaka prison in Ta'iz. It was alleged that during his pre-trial detention he was blindfolded, in solitary confinement, and that he was subjected to beatings and electrical shocks.

6. During the course of trial, in which Mr. Rajih was convicted of murder and sentenced to death, two of the three prosecution "eye witnesses" reportedly failed to identify him in court. In addition, defence witnesses, among them relatives of the murdered victim, asserted that the three prosecution "eye witnesses" were not present at the scene of the crime. The judge ruled that the defence witnesses were "mentally ill" and hence their testimonies were deemed inadmissible.

7. According to the source Mr. Rajih was a member of the National Democratic Front (NDF) the principal opposition group in the former Yemen Republic. He, however, disassociated himself from the NDF before it carried out a series of violent political activities between 1979 and 1981.

8. The allegations as described above have not in substance been controverted by the Government in its response of 19 August 1993. The Government principally referred to the concept of due process and fairness enshrined in the Yemeni justice system as observed in the past 15 centuries by judges. The response further suggested that the imposition of the death sentence was never taken lightly in the administration of the justice system. In order to avoid the death sentence the accused was always granted the benefit of doubt, if the evidence so permitted. The Government asserted that the trial was fair, open, widely advertised and publicly attended.

9. The Government has also testified towards its efforts at persuading the blood heirs of the deceased to accept financial compensation. Lack of success, as in other cases, was attributed to efforts of Mr. Rajih's friends "to capitalize on this human tragedy for dubious publicity and elusive political gains".

10. The response of the Government as set out above does not controvert the allegations made and does not question the veracity of certain pertinent facts in relation to the conduct of the trial. That two of the three prosecution witnesses failed to identify the accused in court is not denied. The reason why the testimonies of certain defence witnesses, including the testimonies of the relatives of the deceased, were discarded on grounds of mental illness is not explained. Implicit in the right to a fair trial is the obligation of the State to place on record for consideration all relevant and pertinent evidence and the obligation of the court to consider all such evidence without declaring it as inadmissible on dubious grounds. The mala-fide intent of the trial gains support from the other allegations regarding pre-trial arrest as already adverted to. Allegations that the accused during his pre-trial detention was kept blindfolded, in solitary confinement and was subjected to lashings and electrical shocks, have also not been denied. The Government has not even attempted to respond to these allegations.

11. The inevitable conclusion reached in a consideration of all the facts and circumstances of the case is that the trial of Mr. Rajih was not conducted with the kind of objectivity and impartiality expected of domestic tribunals. The Working Group considers this as a violation of the right to a fair trial as embodied in article 14 of the International Covenant on Civil and Political Rights, and that the non-observance of the provisions of that article is such that it confers on the deprivation of freedom an arbitrary character. The Working Group further considers that the absence of the trappings of objectivity and impartiality renders the continued detention, upon conviction, of Mansur M.A. Rajih, as arbitrary.

12. In the light of the above the Working Group decides:

(a) The detention of Mansur Muhammad Ahmad Rajih both before his trial and after his conviction is declared to be arbitrary being in contravention of article 14 of the Internacional Covenant on Civil and Political Rights to which the Republic of Yemen is a Party and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group;

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged torture to the Special Rapporteur on the question of Torture.

13. Consequent upon the decision of the Working Group declaring the detention of Mansur Muhammad Ahmad Rajib to be arbitrary, the Working Group requests the Government of Yemen to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaratior of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 7 December 1993.

Decision No. 52/1993 (Iraq)

Communication addressed to the Government of the Republic of Iraq on 3 August 1993.

Concerning: Aziz Al-Syed Jasim, on the one hand, and the Republic of Iraq, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case within ninety (90) days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of the Republic of Iraq. The Working Group transmitted the reply of the Government to the source and received their comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, Aziz Al-Syed Jasim, journalist, writer, editor-in-chief and author, around 49 years old, was reportedly arrested without charge by plainclothes members of the Iraqi security forces in Baghdad on 14 April 1991. After being taken to the Mudiriyyat al-Amn al-Amma, the General Security Directorate in Baghdad, he was allegedly held in solitary confinement and tortured. In July 1992 he was reportedly transferred on grounds of ill-health to the Iraqi intelligence headquarters in Baghdad where he was still believed to be detained without charge or trial. It was alleged that the reason for his detention was his refusal to write articles supporting the Iraqi invasion of Kuwait, despite repeated demands made to that effect by the Iraqi Secret Service. It was reported that Aziz Al-Syed Jasim had previously been detained for short periods in 1978 and 1980 on account of his activities as a journalist and a writer, and his detention, according to the source, could also be related to his peaceful activities as a writer and a journalist.

6. The Government in its response of 13 October 1993, asserted that Aziz Al-Syed Jasim was not in detention and that the authorities had no information concerning him.

7. Considering the specificity of the details in the allegations made, the response of the Government comes as a surprise. It is relevant to note that the Government has not asserted that Aziz Al-Syed Jasim was never detained. Allegations as to his previous detentions have also not been commented upon.

8. The source has in turn reported that there has been no substantial information on the plight of Aziz Al-Syed Jasim since his reported transfer in 1992 to Iraqi intelligence headquarters in Baghdad. In the absence of any authentic information it is difficult, on the basis of these facts, to come to a final conclusion that Azil a-Syed Jasim continues to be in detention.

9. Nevertheless, on the alleged facts, and taking into account the response of the Government, the Working Group is of the opinion that the detention of Aziz Al-Syed Jasim was arbitrary from its inception. His detention was actuated by his refusal to write articles supporting the Iraqi invasion of Kuwait, despite demands made to that effect by the Iraqi Secret Service. His refusal to write the articles is protected by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights to which Iraq is a party. Aziz Al-Syed Jasim's consequent detention without charge or trial was also in violation of articles 8 and 9 of the Universal Declaration of Human Rights and articles 9 and 10 of the International Covenant on Civil and Political Rights.

10. Since the facts in relation to Aziz Al-Syed Jasim's continued detention are unconfirmed, and the Government has stated that it has no information concerning him, the Working Group considers it appropriate, in accordance with its Methods of Work, to refer his case to the Working Group on Enforced or Involuntary Disappearances.

11. In the light of the above the Working Group decides:

(a) The detention of Aziz Al-Syed Jasim is declared to be arbitrary being in contravention of articles 8, 9 and 19 of the Universal Declaration of Human Rights and articles 9, 10 and 19 of the International Covenant on Civil and Political Rights to which the Republic of Iraq is a Party and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the case to the Working Group on Enforced or Involuntary Disappearances for further consideration.

12. Consequent upon the decision of the Working Group declaring the detention of Aziz al-Syed Jasim to be arbitrary, the Working Group requests the Government of Iraq to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 7 December 1993.

Decision No. 53/1993 (People's Republic of China)

Communication addressed to the Government of the People's Republic of China on 3 August 1993.

Concerning: Chen Lantao, on the one hand, and the People's Republic of China, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case within ninety (90) days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the People's Republic of China. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, Chen Lantao, a marine engineer, was reportedly detained on 12 June 1989, and formally arrested a month later in Shangdong Province by Public Security Officers. A warrant for the detention was allegedly produced by the Qingdao Procuratorate and Qingdao Intermediate People's Court. He was reportedly held under custody by the Shangdong provincial prison authorities. He was reportedly tried and convicted by the Qingdao Intermediate People's Court for "counter-revolutionary propaganda and agitation", "disturbing social order" and "disturbing traffic" under articles 52, 60, 64, 103, 158 and 159 of the Criminal Law of China (1979) and article 100 of the Criminal Law of China (1979). Allegedly, in 1991 an appeal petition taken to the Higher People's Court of Shangdong Province was denied.

6. It was also alleged that Chen Lantao's pre-arrest detention exceeded the maximum authorized under the Criminal Procedure Law of China (1979) by almost one month.

7. The Government in its response dated 19 November 1993 stated that Chen Lantao was tried for inciting mobs to disrupt traffic and fomenting social disorder and specifically denied that his conviction had anything to do with listening to the Voice of America or for peacefully exercising his constitutional rights.

8. The complete absence of details in respect of Chen Lantao's trial and conviction leads the Working Group to believe that the conviction of Chen Lantao is based solely on the ground that he listened to the Voice of America, distributed leaflets on the basis of information gathered by

listening to the Voice of America, met with student leaders in Qingdao and called for student strikes. Indeed these activities were in exercise of Chen Lantao's right to free speech and assembly, guaranteed by articles 35 and 41 of the Constitution of the People's Republic of China (which guarantee freedom of speech, of assembly, of association, of procession and of demonstration, and which also grant citizens the right to criticize and make suggestions to any state organ or functionary) and also by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the International Covenant on Civil and Political Rights. Exercise of such entrenched rights cannot form the legal basis of a conviction. Any municipal legislation that considers such activities as "counter-revolutionary propaganda and agitation", "disturbing social order" and "disturbing traffic" is also liable to be declared inconsistent with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and thereby declared inoperative.

9. Chen Lantao's detention in these circumstances is also clearly violative of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

10. In the light of the above the Working Group decides:

> The detention of Chen Lantao from its inception is in contravention of articles 9, 19 and 20 of the Universal Declaration of Human Rights, and articles 9, 19 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

11. Consequent upon the decision of the Working Group declaring the detention of Chen Lantao to be arbitrary, the Working Group requests the Government of the People's Republic of China to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 7 December 1993.

Decision No. 54/1993 (Syrian Arab Republic)

Communication addressed to the Government of the Syrian Arab Republic on 3 August 1993.

Concerning: Jihad Khazem, Ibrahim Habib and Najib Atalayga, on the one hand, and the Syrian Arab Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes the succinct information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made and the succinct reply of the Government of the Syrian Arab Republic, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, the three persons mentioned above were arrested, without a warrant, on 27 February 1992 by the State Security in Lattaquiyeh. All of them were said to be currently held in the prison of Sednaya. The source added that the persons concerned were members of prohibited organizations called "Committees for the Defence of Democratic Freedoms and Human Rights". They were allegedly accused of membership of an illegal organization, and of demanding that it be legalized, in conformity with article 48 of the Constitution of the Syrian Arab Republic. It was not reported whether they had been formally charged with any specific offences, and whether they had stood trial.

6. In its reply, the Government of the Syrian Arab Republic confines itself to stating that the Syrian citizens Jihad-al-Khazem, Ibrahim Habib and Najib Atalayga have been brought before the State Security Court, without further comment. In the circumstances, the Working Group considers that the only reason for the detention of the persons mentioned in the communication was their membership of "Committees for the Defence of Democratic Freedoms and Human Rights", a prohibited organization, the legalization of which they were demanding, in conformity with article 48 of the Constitution. It is not reported that in doing so they used violence or called on others to do so. It thus appears that they are being detained solely for having exercised freely and peacefully their right to freedom of association, a right guaranteed by article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights.

7. In the light of the above the Working Group decides:

The detention of Jihad Khazem, Ibrahim Habib and Najib Atalayga is declared to be arbitrary being in contravention of article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Jihad Khazem, Ibrahim Habib and Najib Atalayga to be arbitrary, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 7 December 1993.

## Decision No. 55/1993 (Ethiopia)

Communications addressed to the Government of Ethiopia on 3 August and 20 September 1993.

Concerning: Hagos Atsbeha (communication of 3 August 1993); Geremew Debele, Admasu Tesfaye and Maj. Gen. Alemayehou Agonafer Negfwo (communication of 20 September 1993), on the one hand, and Ethiopia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned (except for the case of Hagos Atsbeha), in respect of the cases within ninety (90) days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Ethiopia. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. It was alleged in the communications from the sources, summaries of which were transmitted to the Government, that:

(a) Hagos Atsbeha, aged 58, a merchant living as a refugee in the Sudan since 1979, was reportedly kidnapped from Gedaref, Sudan, on 25 April 1988 by three members of the Tigray People's Liberation Front (TPLF), led by Gebre-Hiwet (Abu-Wonber), and taken across the border into Tigray. He was first detained in Degena, then transferred to Wori and was reportedly at present being held in a prison in Mekele. Allegedly, he has been held incommunicado since 1988, with neither his family nor his legal counsel being allowed to visit him. It was also alleged that he has never been given the opportunity to challenge his detention before a judicial or other authority. The reasons given by the authorities for his detention without trial were not clear: while at first he was reportedly accused of "conspiring with a rival political organization", he was later accused of an unspecified criminal offence. According to the source, the real reason for his detention since 1988 was his family relationship with Pregawi Berhe (Berihu) - his brother-in-law - who was a former Politbureau member and a military commander, for over 10 years, of the TPLF, and who left the organization in early 1988 for political reasons.

(b) Geremew Debele, aged 47, former Minister of Agriculture and former Ambassador of Ethiopia to Italy and to Bulgaria; detained on 30 May 1991 by order of the Transitional Government, and since that date held in the

"Alem Bekage" prison in Addis Ababa, without charge or trial. According to the source, Dr. Debele gave a statement to the Special Prosecutor only after two years of detention. He was reportedly interrogated about his involvement, as a member of the Council of Ministers, in making various policy decisions which were made while Dr. Debele was reportedly out of the country in discharge of his ambassadorial assignments.

(c) Admasu Tesfaye, aged 41, former District (Woreda) Administrator, detained on 28 July 1991 by order of the Transitional Government and held at the "Alem Bekage" prison in Addis Ababa, without charge or trial.

(d) Maj. Gen. Alemayehou Agonafer Negfwo, aged 58, mechanical engineer, commanding officer of the Ethiopian Air Force at the time of detention. Was detained in May 1991 and was currently being held in the central Penitentiary in Addis Ababa. He has not been charged or tried.

(e) According to the source the three persons mentioned above ((b), (c) and (d)), like other former government officials and high ranking military officers, reported to the new authorities in Ethiopia, and were detained. In August 1992 a decree was promulgated establishing the office of the Special Prosecutor who was to be responsible for prosecuting officials of the former regime found to have misused their authority, but even after the Prosecutor concluded his investigations, no charges were brought against these persons, and they continued to be detained. Reportedly, at the time the law establishing the office of Special Prosecutor was promulgated, in August 1992, the writ of habeas corpus was also suspended for a period of six months. After this six-month period expired, in February 1993, a petition was filed with the High Court for the release of these persons on the grounds of illegal detention, but it was rejected, as the Special Prosecutor stated that he had asked a district court to grant him additional time for further investigation. The source alleged that the detention of the above-mentioned persons ((b), (c) and (d)) for over two years without being brought to trial, nor released, was arbitrary, being in violation of the international provisions relating to the right to a fair trial.

6. The Government, which has not replied concerning the case of Hagos Atsbeha, asserts, through the Office of the Special Prosecutor, with reference to the cases of Geremeu Debele, Admasu Tesfaye and Maj. Gen. Alemayehou Agonafer Negfwo, that these persons are being detained because they are implicated in serious violations of human rights committed under the Mengistu regime. According to the Special Prosecutor, it would not be possible to determine the charges against them and their degree of responsibility until his services had concluded the investigations that were under way. It will thus be seen that the Special Prosecutor does not deny that the detention of the persons in question is due solely to the fact that they were officials of the former regime. He likewise recognizes that they have not so far been charged with any specific offence, still less tried, although they have been detained for more than two years, and even five years in the case of Hagos Atsbeha. It should also be noted that, according to the source, which has not been contradicted by the Special Prosecutor on this point either, the persons concerned were not able to contest their detention by invoking the habeas corpus procedure at the time of tneir arrest because the procedure had been suspended for a period of six months. At the end of

that period, their request was rejected by the High Court because the Special Prosecutor stated that he had been granted additional time for further investigation by a district court (it was not made clear whether that also implied an extension of the suspension of habeas corpus). Accordingly, the Working Group, while recognizing the difficulties being encountered by the new authorities in Ethiopia, cannot but find that various recognized international rules relating to the right to a fair trial have been violated and that the non-observance of those rules is such that it confers an arbitrary character on the deprivation of freedom suffered by Hagos Atsbeha, Geremeu Debele, Admasu Tesfaye and Maj. Gen. Alemayehou Agonafer Negfwo.

7. In the light of the above the Working Group decides:

(a) The detention of Hagos Atsbeha, Geremeu Debele, Admasu Tesfaye and Maj. Gen. Alemayehou Agonafer Negfwo is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 (3), paragraphs (a) and (c) of the International Covenant on Civil and Political Rights as well as principles 2, 10, 11 and 12 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Hagos Atsbeha, Geremeu Debele, Admasu Tesfaye and Maj. Gen. Alemayehou Agonafer Negfwo to be arbitrary, the Working Group requests the Government of Ethiopia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 8 December 1993.

Decision No. 58/1993 (Colombia)

Communication addressed to the Government of Colombia on 13 August 1993.

Concerning: Orlando Quintero Paez, on the one hand, and the Republic of Colombia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of an allegation of arbitrary detention reported to have occurred in the country in question.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case within ninety (90) days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Colombia. The Working Group has transmitted the reply of the Government to the source and received their comments. The Working Group is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

6. The Working Group considers that:

(a) According to the communication, Orlando Quintero Paez was arrested on 5 July 1989 in the town of Ibague, following a clash between rebel forces of the Unión Camilista Ejército de Liberación Nacional - to which he belongs - and the public forces. According to the source the arrest took place after the clash - in which other insurgents died and six others were arrested - when Quintero, who had been wounded, reported to the police, seeking help, and not in flagrante delicto, as the authority maintains.

(b) Since his arrest, Quintero has been brought to trial. He made a statement on 7 July and on 12 July he was ordered to be held in preventive detention.

(c) In the course of the trial, Orlando Quintero was convicted on two occasions: on 16 February 1990 and on 14 January 1991. However, both convictions were annulled by the Supreme Court.

(d) The Government of Colombia, in its reply of 18 October 1993, states that Quintero "is not in preventive detention", but that "on 16 February 1990 he was sentenced to 118 months' imprisonment for the breach of certain provisions of Decree 180 of 1988".

(e) The Working Group had before it a document of the Instituto Nacional Penitenciario y Carcelario (INPEC) confirming that Quintero is in the prison of the judicial district of Santafé de Bogotá - the "Model" prison, as a person charged with the commission of an offence, his conviction having been annulled.

(f) The Group therefore concludes that the conviction of 16 February 1990 was indeed annulled and that Quintero therefore still remains a person brought to trial or charged but not convicted. The foregoing confirms that, following the conviction referred to by the Government, there was a later one - of 14 January 1991, as a result of which Quintero received a 10-year sentence - which could not have occurred if the first conviction had not been annulled.

(g) Both the Government and the source challenge the basing of the charges against Quintero, as far as substantive grounds are concerned, on Decree 180/88, issued under the powers granted by the State of Siege in force at the time, which provides penalties for the offence of rebellion, as was also maintained - according to the source - by the Government Procurator's Office during the pre-trial proceedings. Special Decree 2266/91 of the Special Legislative Commission transformed this enactment into permanent legislation. The offence of rebellion is punishable by imprisonment for three to six years.

(h) Under the terms of the Code of Criminal Procedure in force in 1991, the accused should obtain his release because the period of deprivation of freedom exceeds the minimum of the probable penalty, which was underestimated by the Public Order Tribunal which tried him.

(i) Upon the entry into force of the new Code of Criminal Procedure (Decree 2700/91) on 1 July 1992, a new ground for release from imprisonment was to become operative, namely that the pre-trial proceedings were not completed within 240 days.

(j) However, under the powers granted by the State of Internal Disturbance, the Government of Colombia suspended the application of this rule, so that, although the above-mentioned state of emergency was in force, no duration was fixed for the pre-trial proceedings.

(k) Article 11 of the Universal Declaration establishes the principle of presumption of innocence until guilt has been proved; article 9 of the International Covenant on Civil and Political Rights provides that "anyone ... shall be entitled to trial within a reasonable time or to release" and that detention in custody "shall not be the general rule", while article 14, paragraph 3 (c), provides that everyone shall be entitled to the "minimum guarantee" "to be tried without undue delay"; and principles 36, 37 and 38 of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment establish safeguards against prolonged preventive detention.

6. In the light of the above, the Working Group decides:

The detention of Orlando Quintero Paez is declared to be arbitrary, being in contravention of article 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of the above-named person to be arbitrary, the Working Group requests the Government of Colombia to take the necessary steps to remedy this situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 12 December 1993.

Decision: 59/1993 (Kuwait)

Communication addressed to the Government of Kuwait on 22 February 1993.

Concerning: Omar Shehada Abu-Shanab, on the one hand, and the State of Kuwait, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Kuwait. The Working Group transmitted the reply of the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. The Working Group considers that:

(a) According to the communication, Omar Shehada Abu-Shanab, a Palestinian citizen using a Jordanian passport who was a nurse at Al Razzi hospital during the Gulf war, was arrested on 10 March 1991 while leaving his place of work and disappeared until his trial on 9 June 1991. At this trial he was sentenced to 15 years' imprisonment for having collaborated with the enemy in the above-mentioned war.

(b) The communication further maintains that the charge against him was unjust since, in the course of his duties as a nurse, he simply acted in a humanitarian spirit, "without making distinctions between the sick and wounded for whom he was caring in that war situation on the ground that they belonged to one side or the other". The communication presumes that his arrest may have been due to this situation or to the fact that "he was a Palestinian or simply held a Jordanian passport".

(c) The communication adds that, during the two months when nothing was known of his fate, he was tortured and beaten, subjected to electric shocks and forced to make false statements.

(d) When the communication was transmitted to the Government, the latter stated that no person with the name given was under detention and that no one of that name had been tried. The only person with a similar name was Ahmed Rashid Ahmad Abu Shanab, who had been arrested in April 1991, charged with theft and released on 19 December 1992.

(e) The Working Group transmitted the reply to the source, which stated that the detainee's complete name is "Omar Shehada Abdalla Hamdan Abu-Shanab" and that he is still being held in cell No. 4 in Al Markazy Central Prison. It added that his relatives are in touch with him through the International Committee of the Red Cross and the Spanish Embassy in Kuwait. It appended the copy of a letter which the prisoner had sent to them and whose postmark indicates that it was sent from Kuwait, the sender's address being given as cell No. 4, Al Markazy Central Prison.

(f) Out of a desire to clear up the case, the Working Group consulted the International Committee of the Red Cross, which, referring to "Omar Shahadeh alias Abu Shanab", said it regretted to state that it was only in touch with the family of the persons concerned and was consequently unable to answer the Group's question.

(g) In the circumstances, the Working Group has to decide whether "Omar Shehada Abu Shanab", "Omar Shehada Abdalla Hamdan Abu Shanab" or "Omar Shehadeh alias Abu Shanab" is in fact under detention and, if so, whether or not his detention is arbitrary.

(h) In the light of the information given by the source, and taking special account of the fact that there is a letter with a postmark giving the sender's address as Kuwait Central Prison, and the fact that the International Committee of the Red Cross has referred to a person known as "Omar Shehadeh alias Abu Shanab" - a name which does not come from the group but can only originate from the ICRC files, the Working Group concludes that there is indeed a person detained in Kuwait Central Prison with the latter name and that, because of the similarity with the names supplied by the source, it can only be the same person.

(i) In the absence of a reply from the Government to the actual substance of the communication, the Working Group reaches the conclusion that the detention referred to is arbitrary. The prisoner was in fact accused and sentenced for the lawful exercise of the medical occupation in which he was engaged in Al-Razzi hospital, a right embodied in article 23, paragraph 1, of the Universal Declaration of Human Rights. It is quite clear that "free choice of employment" presupposes the free performance of work in conditions in conformity with the specific rules for the activity in question. It is recognized that in a war situation it is not lawful for medical personnel to extend the required humanitarian care only to the wounded of one side. Such action is contrary to the 1949 Geneva Conventions relating to the treatment of wounded prisoners and to civilians affected by the conflict.

(j) Furthermore, the detention is arbitrary, in conformity with category III of the principles applicable in the consideration of cases submitted to the Working Group since the prisoner is being held in breach of principle 1 (humane treatment), principle 2 (every detention shall be carried out strictly in accordance with the law) and principle 19 (communication with his family) of the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment. The non-observance of the principles mentioned derives from the fact that at present the Government of Kuwait denies the detention of the person referred to in this decision, which makes it impossible to exercise the human rights provided for in those principles.

(k) As to the allegations of torture, the Working Group, in a spirit of coordination with the whole United Nations system for the protection of human rights, will transmit the case to the Special Rapporteur on the question of Torture.

(l) In addition, if the Government of Kuwait insists that the person referred to in this decision is not under detention, this information will be transmitted to the Working Group on Enforced or Involuntary Disappearances.

6. In the light of the above the Working Group decides:

(a) The detention of Omar Shehade Abu Shanab is declared to be arbitrary, being in contravention of articles 9 and 23 of the Universal Declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged torture to which Mr. Abu Shanab was subjected to the Special Rapporteur on the question of Torture.

7. Consequent upon the decision of the Working Group declaring the detention of Omar Shehade Abu Shanab to be arbitrary, the Working Group requests the Government of Kuwait to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

8. If the Government of Kuwait does not report that it has taken the necessary measures to remedy the situation, or if it insists that the person referred to in this decision is not under detention, within a period of 30 days from the time when this decision is transmitted to it, this information will be transmitted to the Working Group on Enforced or Involuntary Disappearances.

Adopted on 9 December 1993.

Decision No. 60/1993 (Saudi Arabia)

Communication addressed to the Government of Saudi Arabia on 3 August 1993.

Concerning: Muhammed Abdullah al-Mas'ari and Abdullah al-Hamed, on the one hand, and the Kingdom of Saudi Arabia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of each of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Saudi Arabia. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government:

(a) Dr. Muhammed Abdullah al-Mas'ari, born in 1946 in Riyadh, a professor of Physics at the King Saud University in Riyadh and spokesperson for the "Committee for the Defence of Legitimate Rights" (CDLR) which was founded by six religious scholars and professionals on 3 May 1993, was arrested from his home on the Campus of King Saud University in Riyadh by Mabahith al-Amma (General Intelligence) on 15 May 1993. The officers reportedly manhandled his 18 year old son and his wife and ransacked the house confiscating papers, books and videotapes.

According to the source Dr. Muhammed Abdullah al-Mas'ari has not been charged or tried and has been held incommunicado since his arrest. It was also alleged that he has not been allowed visits from family members, legal counsel or doctors and that he has been tortured by being deprived of sleep. In the past he had reportedly been banned from travelling for one year in 1991, allegedly because of his political activities. It was further reported that prior to his arrest on 15 May, he had been briefly detained and questioned.

(b) Dr. Abdullah al-Hamed, a writer and a lecturer at al-Imam Muhammed bin Saud University in Riyadh, and one of the founding members of the CDLR in Saudi-Arabia, was reportedly arrested at his house by members of al-Mabahith al-Amma on 15 June 1993 and taken to an unknown location, where he has, since his arrest, been held incommunicado. According to the source Dr. Abdullah al-Hamed had, on several occasions in the past, been summoned for questioning by the authorities.

The source alleged that both Dr. Muhammed Abdullah al-Mas'ari and Dr. Abdullah al-Hamed were detained solely for the non-violent expression of their beliefs.

6. It appears from the facts submitted to the Working Group that the detention of Muhammed Abdullah al-Mas'ari and Abdullah al-Hamed arises from the fact that they exercised their right to freedom of opinion and expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, and that they exercised their right to freedom of association, a right guaranteed by article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights. It is not reported that in doing so they used violence or that they threatened, contrary to the law, in any way whatever, national security, public order (ordre public), public health or morals or the rights or reputations of others, in accordance with the terms of article 19 (2) of the Universal Declaration of Human Rights and articles 19 (3) and 22 (2) of the International Covenant on Civil and Political Rights.

7. It should also be noted that these two persons are apparently being held in an unknown place and that one of them, Muhammed Abdullah al-Mas'ari, being deprived of his right to the assistance of a lawyer, to medical attention and to visits from members of his family, is said to have been subjected to torture or other cruel treatment through being prevented from sleeping. It appears from these facts that articles 5 and 9 of the Universal Declaration of Human Rights, articles 7, 9 and 10 of the International Covenant on Civil and Political Rights and principles 1, 6, 15, 16 (1), 18, 19 and 32 of the Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment have been violated.

8. In the light of the above the Working Group decides:

(a) The detention of Muhammed Abdullah al-Mas'ari and Abdullah al-Hamed is declared to be arbitrary being in contravention of articles 5, 9, 19 and 20 of the Universal Declaration of Human Rights and articles 7, 9, 10, 19 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) The Working Group decides, furthermore, to transmit the information concerning the alleged torture to the Special Rapporteur on the question of Torture.

9. Consequent upon the decision of the Working Group declaring the detention of Muhammed Abdullah al-Mas'ari and Abdullah al-Hamed to be arbitrary, the Working Group requests the Government of Saudi Arabia to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 9 December 1993.

**Decision No. 61/1993 (Egypt)**

**Communication addressed to the Government of the Arab Republic of Egypt on 3 August 1993.**

**Concerning: Hassan al-Gharbawi Shehata, on the one hand, and the Arab Republic of Egypt, on the other.**

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of the Arab Republic of Egypt. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication submitted by the source, a summary of which was forwarded to the Government, Hassan al-Gharbawi Shehata, aged 31, a lawyer, was arrested around January 1989, and charged in connection with two cases relating to disturbances in Ain Shams. He has been kept in administrative detention since then, despite many court orders to release him. It was further reported that the Government, in its reply to a previous letter on that subject by the same source, said that Mr. Shehata was currently held in detention (in accordance with law No. 162 of 1958) in light of the criminal and terrorist danger he represented, issuing directives and orders to elements of a secret terrorist organization to undertake acts of violence and terrorism. Nevertheless, in its reply to the source, the Government failed to explain why, in these circumstances, the Egyptian court, on several occasions, ordered that Mr. Shehata be released.

6. It appears from the facts as described above that Hassan al-Gharbawi Shehata has now been kept in detention for five years without a trial despite several court orders for his release. He is thus being denied his right to a fair trial as guaranteed by articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights and by principles 32 and 38 of the Body of Principles for the

Protection of All Persons under Any Form of Detention or Imprisonment. The non-observance of these articles and principles relating to the right to a fair trial is such that it confers an arbitrary character on Mr. Shehata's deprivation of freedom.

7. In the light of the above the Working Group decides:

The detention of Hassan al-Gharbawi Shehata is declared to be arbitrary being in contravention of articles 9, and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights to which Egypt is a Party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of Hassan al-Gharbawi Shehata to be arbitrary, the Working Group requests the Government of Egypt to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 9 December 1993.

Decision No. 62/1993 (Myanmar)

Communication: addressed to the Government of Myanmar on 8 April 1992.

Concerning: Aung Lwin, Nyan Paw, U Tin Oo and Thu Ra alias "Zargana", on the one hand, and the Union of Myanmar, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Myanmar. The Working Group transmitted the reply provided by the Government to the source but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. In rendering its decision, the Working Group, in a spirit of cooperation and coordination, has also taken into account the report of the Special Rapporteur on the situation of human rights in Myanmar, pursuant to Commission on Human Rights resolution 1992/58 (E/CN.4/1993/37).

6. It was alleged in the communication from the source, a summary of which was forwarded to the Government, that:

(a) Aung Lwin (alias San Shwe Maung), born in 1935, chairman of the Burma Film Union, leader of the Literary and Artists' Union and co-founder and information officer of the Central Executive Committee of the National League for Democracy (NLD), was arrested without a warrant on 28 June 1989 in Yangon by agents of the Directorate of Defence Services Intelligence (DDSI). He was not informed of the reasons for his arrest. It was alleged that his arrest stemmed from his active participation in the 1988 pro-democracy movement and from his activities in the NLD. He was said to be held at Insein prison. Aung Lwin was reported to have been held in detention initially under the preventive detention provisions of the 1975 State Protection Law. On 29 December 1989, a military tribunal sentenced him to five years' imprisonment for treason, reportedly for disseminating papers to foreign diplomats and organizations.

(b) Nyan Paw (alias Min Lu), age 36, writer and poet, was arrested without a warrant on 13 September 1990 in Yangon by DDSI agents, after he was identified as the author of several leaflets, pamphlets and poems considered disrespectful by the State Law and Order Restoration Council (SLORC). He was

charged with attempting to "create misunderstanding" between the People and the Defence Services in violation of the 1950 Emergency Provision Act (5J). He was said to remain in detention at Insein prison. On 15 November 1990, Nyan Paw was sentenced by a military tribunal to seven years' imprisonment.

(c) U Tin Oo, age 64, former general and Government minister, now Chairman of the NLD, was arrested on 20 July 1989 in Yangon. He was first held under house arrest and then transferred to Insein prison. On 22 December 1989, he was sentenced to three years hard labour by a military tribunal which found him guilty on several charges including "creating public disturbances". Allegedly, in May 1991 this sentence was increased by an additional seven years, or, according to other reports, by 14 years. It was alleged that the charges against U Tin Oo stemmed from his participation in June 1989 in demonstrations held in defiance of the martial law which bans public gatherings, at which he called for non-compliance with martial law restrictions on civil liberties and for non-violence. It was further reported that U Tin Oo's health was deteriorating as he was suffering from thrombophlebitis. It was alleged that he was not receiving any medical care in prison.

(d) Thu Ra, alias "Zargana", a dentist and actor, was arrested on 19 May 1990 in Yangon and sentenced to five years imprisonment, reportedly for having impersonated a leading member of SLORC while exercising his profession as an actor. Allegedly, his trial was held in camera, he was denied access to a lawyer, and he was unable to examine the witnesses against him. It was further alleged that there was no right of appeal against criminal convictions. Thu Ra was said to be imprisoned at Insein prison.

7. For the Government of the Union of Myanmar, which has announced in passing the release of Aung Lwin on 1 May 1992 and of Nyan Paw on 22 September 1992 (amnestied), none of the persons mentioned above was or is detained arbitrarily. It was as a result of perfectly legal procedures and a properly conducted trial that they were convicted of offences under the criminal law. Thus, for example, Nyan Paw is accused of writing anti-government pamphlets, Thu Ra, alias Zargana, of making seditious speeches during the electoral campaign of the independent candidate Thakinma Daw Hala Kyi and U Tin Oo of engaging in subversive activities. It is the same legislative provisions that are cited, as the Working Group has already had occasion to note in its decisions Nos. 52/1992 and 38/1993, following the example of the Special Rapporteur on Myanmar in his preliminary report (A/47/651). These legislative provisions are section 10 (a) of the State Protection Law of 1950 and section 5 (j) of the Emergency Provisions Act of 1950, which incidentally give competence to military courts. From the fact that such courts are being used to try civilians who are political leaders, human rights activists, journalists and students, and this under emergency legislation which has been in force since 1950, the Working Group draws the conclusion, as it has said in its decisions mentioned above, that what is really held against the persons mentioned in the communication is the fact that they have opposed the political regime in power in their country. It is not reported that in doing so they have used violence or called upon others to do so. In short it is evident that they were or are being detained solely for

having exercised freely and peacefully their right to freedom of opinion and expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

8. In the light of the above the Working Group decides:

The detention of U Tin Oo and Thu Ra alias "Zargana", as well as that of Aung Lwin and Nyan Paw, despite their release, is considered to be arbitrary, being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of Myanmar to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 9 December 1993.

Decision No. 63/1993 (People's Republic of China)

Communication addressed to the Government of the People's Republic of China on 14 October 1991.

Concerning: Wang Juntao and Chen Ziming, on the one hand, and the People's Republic of China, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question, within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the People's Republic of China. The Working Group transmitted the reply provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. The communication submitted by the source, a summary of which was transmitted to the Government concerned Wang Juntao, 33, and Chen Ziming, 39, both involved in the formation and the activities of the Social and Economic Sciences Research Institute (SERI). Wang Juntao was arrested on 20 October 1989; Chen Ziming was detained, together with his wife, in October 1989 in Guangdong. After four months of solitary confinement, they were both brought to trial on 12 February 1991. After closed hearings, they were sentenced to 13 years' imprisonment and additional four years' political deprivation for "conspiring to subvert the government" and "carrying out counter-revolutionary propaganda and incitement" during the 1989 Tiananmen Square demonstrations in Beijing. It was alleged that Wang Juntao's lawyers were not allowed to defend him on appeal, and that Chen Ziming's lawyers had their permit revoked. Since 12 April 1991, both were held in solitary confinement. According to the source, Wang Juntao and Chen Ziming went on hunger strike on 13 and 14 August 1991, respectively. Since 13 August 1991, Wang Juntao's wife had no longer been permitted to visit her husband. There was serious concern about the health condition of Wang Juntao, who was reported to be suffering from hepatitis B.

6. In its reply the Government provided the following version regarding the facts: "Chen Ziming and Wang Juntao during the Beijing disturbances and riots of 1989 noisily urged the forcible overthrow of the People's Government and the socialist system. To that end, they cobbled together an anti-government coalition of illegal organization and engaged in a series of anti-Government

activities in Beijing. After martial law was declared in parts of Beijing, they directed mob action to obstruct and ambush troops deployed to maintain order. The court judged them to have violated the Penal Code of the People's Republic, and in February 1990 sentenced each to 13 years imprisonment."

7. In the light of the above the Working Group decides:

The detention of Wang Juntao and Chen Ziming, is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the People's Republic of China to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 9 December 1993.

Decision No. 64/1993 (People's Republic of China)

Communication addressed to the Government of the People's Republic of China on 3 February 1992.

Concerning: Zhe Fan, on the one hand, and the People's Republic of China, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the Government concerned has informed the Group that the above-mentioned person is no longer in detention.

4. In the context of the information received by the Working Group, having applied its mind to the available information, it is of the opinion that no special circumstances warrant the Group to consider the nature of the detention of the person released.

5. The Working Group, without prejudging the nature of the detention, decides to file the case of Zhe Fan in terms of paragraph 14 (a) of its Methods of Work.

Adopted on 9 December 1993.

**Decision No. 65/1993 (People's Republic of China)**

**Communications addressed to the Government of the People's Republic of China on 3 February and 15 July 1992.**

**Concerning: Jampa Ngodrup (communication of 3 February 1992); Lhundrup Ganden, Lobsang Choejor, Lobsang Yeshe, Lobsang Palden, Drakpa Tsultrim, Lobsang Tashi, Tempa Wangdrak, Tenzin Tsultrim, Ngawang Phulchung, Ngawang Oser, Jamphel Changchub, Kelsang Thutob, Ngawang Gyaltsen, Jampal Lobsang, Ngawang Rigzin, Jampal Monlam, Jampel Tsering, Ngawang Kunga, Karma, Monlam Gyatso, Gyatso, Yulu Dawa Tsering, Thubten Tsering (1), Dawa Kyizom, Ngawang Chamtsul, Lobsang Tsultrim, Ama Phurbu, Phurbu Drolma, Migmar, Dawa Drolma, Tseten Norgyal, Thubten Tsering (2), Tamsin Sithar, Ngawan Dechoe and Tsering Ngodup (communication of 15 July 1992), on the one hand, and the People's Republic of China, on the other.**

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communications received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question, within 90 days of the transmittal of the letters by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the People's Republic of China. The Working Group transmitted the replies provided by the Government to the source and received its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. It was alleged in the communications from the source, a summary of which was transmitted to the Government, that:

(a) Jampa Ngodrup, aged 45, ethnic Tibetan, doctor at the clinic in Chengguan City, District of Barkor, was reportedly arrested by agents of the City Public Security Bureau in Lhasa on 20 October 1989. On 13 August 1990, the Lhasa Municipal Intermediate Court ordered his detention on the grounds that Jampa Ngodrup had "with counter-revolutionary aims, collected lists of people detained" during the activities in favour of Tibetan independence carried out by Tibetans in Lhasa in 1988 and "passed them on to others, thus undermining the law and violating the laws of secrecy" under article 97, paragraph 1 and article 52 of the Criminal Law of the People's Republic of China (PRC).

(b) Lhundrup Ganden, Lobsang Choejor, Lobsang Yeshe, Lobsang Palden, Drakpa Tsultrim, Lobsang Tashi, Tempa Wangdrak and Tenzin Tsultrim. Monks of the Ganden monastery outside Lhasa. Arrested between 5 and 7 March 1988 after

a protest on 5 March 1988, following the authorities' failure to release a fellow monk from detention. The aforementioned monks were charged with demonstrating, making posters, calling for Tibetan independence and possession of a leaflet, and were sentenced to prison terms ranging from 5 to 12 years. They were held in the Drapchi prison. Lhundrup Ganden was initially sentenced to three years of re-education through labour, but after he shouted slogans in prison he received an additional nine-year prison sentence. Lobsang Palden and Tempa Wangdrak had been held in Drapchi prison until 27 April 1991 and were then transferred to TAR Regional Prison No. 2 in Powo Nyingtri, where they were still believed to be held at present. The transfer was apparently linked to an attempt made by Tempa Wangdrak (together with another person), to hand Ambassador Lilley a letter, which was retrieved by Chinese officials. Lobsang Palden was among three witnesses to the incident.

(c) Ngawang Phulchung, Ngawang Oser, Jamphel Changchub, Kelsang Thutob, Ngawang Gyaltsen, Jampal Lobsang, Ngawang Rigzin, Jampal Monlam, Jampel Tsering and Ngawang Kunga. Monks of the Drepung monastery in Lhasa. All were sentenced on 30 November 1989 to long prison terms. The first five aforementioned monks were given prison sentences ranging between 17 and 19 years. They were found guilty of "forming a counter-revolutionary organization", "spreading counter-revolutionary propaganda which venomously slandered the people's democratic dictatorship", "passing information to the enemy", and "crossing the border illegally and spying". Jampal Lobsang and Ngawang Rigzin were each sentenced to 10 years in prison for "spreading counter-revolutionary propaganda" and "agitation", and the last three aforementioned were each sentenced to five years in prison for "participating in criminal activities organized by a counter-revolutionary group". According to the source these three monks, as well as Jampal Lobsang and Ngawang Rigzin, had been arrested in September 1987 and held without charge for four months, after they participated in a non-violent pro-independence protest. In January 1988 they were released. In April 1989 the first four aforementioned were arrested and accused of forming a counter-revolutionary group in January 1989 which produced leaflets critical of the Chinese Government. The other six monks were arrested in March 1989 and were described as "accessory offenders" in the same case. The trial on 30 November 1989 was held as a mass rally in the Lhasa Intermediate People's Court. At the trial, Ngawang Phulchung was described as the "elected leader" of the group, and was sentenced to 19 years in prison. Jamphel Changchub was described as a "main culprit", and was sentenced to 19 years' imprisonment, to be followed by deprivation of political rights for an unknown number of years.

(d) Karma, (aged 41), Monlam Gyatso (21) and Gyatso (22), residents of Gyama Trigang, Maldro Gungkar district. The three villagers were arrested on 17 and 19 March 1992 in their village and were currently being held at the Maldro Gungkar District Prison. The reason for their detention appeared to be their alleged involvement in putting up pro-independence posters which appeared in the district.

(e) Yulu Dawa Tsering, aged 59, teacher at the Ganden monastery. Arrested on 26 December 1987. On 19 January 1989 he was tried and sentenced to 10 years' imprisonment for "spreading counter-revolutionary propaganda", "viciously vilifying the policies of the Chinese Communist Party" and

"attempting to overthrow the people's democratic dictatorship". He was currently held in Drapchi prison, Lhasa. According to the source the reason for the jail sentence was a private conversation which Tsering had with a visitor, who recorded it. The source affirmed that no inflammatory language was used by him during the recorded conversation.

(f) Thubten Tsering (1), aged 61, treasurer at Sera monastery. Arrested on 26 December 1987. Was tried and sentenced to six years' imprisonment for "being an accessory to the crime of spreading counter-revolutionary propaganda". According to the source the reason for the jail sentence was the fact that he invited two visitors, a Tibetan relative living in Italy and his Italian student, for a meal at his house. He was currently held in Drapchi prison, Lhasa.

(g) Dawa Kyizom (female), a 19 year old student, arrested on 26 October 1990 from her home in Thepung Gang, East Lhasa. Currently serving a three-year term of re-education through labour in Gutsa prison. According to the source the reason for this measure was the fact that she gave a Tibetan flag to a monk.

(h) Ngawang Chamtsul, monk, caretaker at Potala palace, the residence of Dalai Lama, in Lhasa. Was arrested in March 1989 and sentenced, on 6 December 1989 to 15 years' imprisonment plus five years' deprivation of political rights. The offences imputed to him were "counter-revolutionary propaganda, inflammatory delusion and espionage". According to the source his activity did not go beyond the non-violent exercise of the right to freely receive and impart information, and the right to freedom of opinion and expression. He was currently held in Drapchi prison.

(i) Lobsang Tsultrim, aged 72, a senior monk at Drepung monastery. Arrested on 14 April 1990 and sentenced to six years' imprisonment for "failure to reform through re-education" and "becoming a reactionary with the hope of splitting the great motherland". He had been held for six months in 1988. He was currently held in Drapchi prison.

(j) Ama Phurbu (female), aged 54, a businesswoman. Arrested on 31 October 1989. According to the source she was sentenced on 16 September 1990, without trial, to three years' imprisonment, apparently for having organized memorial prayers for Tibetans killed in earlier demonstrations. No charges were published, but her arrest came after the authorities claimed to have found political leaflets in her home. She was currently held in Gutsa detention centre.

(k) Phurbu Drolma (female), a 20 year old student. Arrested on 11 December 1990 while distributing leaflets. Was released two days later, and then rearrested. No charges have been published and no trial was held. She was currently held in Gutsa detention centre. Another female student named Migmar, aged 22, was believed to have been arrested, released and then rearrested together with Phurbu Drolma and was also currently held in Gutsa jail.

(l) Dawa Drolma (female), a 21-year-old teacher. Arrested in late 1989, then released and re-arrested in 1990. She was said to be serving a

five-year prison sentence in Drapchi prison. The offences imputed to her were "encouraging her pupils to learn a reactionary song", "counter-revolutionary instigation", and "providing shelter to, and encouraging rioters". The source added that Dawa Drolma and 24 other female detainees were badly beaten on 5 March 1992, the Tibetan New Year's Day, for wearing their own clothes. Following that incident she was placed in solitary confinement.

(m) Tseten Norgyal, aged 48, an accountant. Arrested on 21 March 1989 and sentenced on 8 February 1990 to four years' imprisonment for "inciting the overthrow of the socialist system". According to the source Tseten Norgyal had previously served a prison sentence of 12 or 20 years, ending in 1985. The reasons for his detention were said to be the reproduction and distribution of political leaflets. He was allegedly badly tortured and blinded in one eye while he was held incommunicado at the Chakpori interrogation centre. The source added that, at his trial, he only had two days to prepare his defence. He was currently held in Drapchi prison.

(n) Thubten Tsering (2), aged 41, a technician. Arrested on 20 April 1989 and sentenced to four years' imprisonment, for "inciting the overthrow of the socialist system" and reproduction of "reactionary documents". According to the source, Thubten Tsering was given a four-year prison sentence even though the charges against him did not include any violent acts or intent to harm on his part. The reason for his detention was said to be the reproduction and distribution of political leaflets in 1988-1989. The source added that, at his trial, he only had two days to prepare his defence. He was currently held in Drapchi prison.

(o) Tamdin Sithar, aged 28, a teacher. Arrested on 26 August 1983 and sentenced, in 1984, to 12 years' imprisonment. The charges against him were not known, but were believed to include "espionage". He had previously served a prison sentence from 1971 to 1975. He was currently held in Drapchi prison.

(p) Ngawang Dechoe, aged 25, a painter in the Drepung monastery. Arrested on 10 April (or on 21 March) 1991. No charges have been published against him. According to the source he was accused of "resisting arrest", and the reason for his detention was that the authorities found his skills as a painter useful. Allegedly he was taken around to paint military barracks and policemen's houses. He was currently held in the Gutsa detention centre.

(q) Tsering Ngodup, aged 57, a restaurant owner. Arrested in March 1989 and sentenced to 12 years' imprisonment, plus 4 years of deprivation of political rights, for "counter-revolutionary propaganda", "inflammatory delusion", "encouraging reactionary singing" and "espionage". According to the source the reason for his detention was singing and tape-recording songs about Tibetan independence, and gathering lists of people arrested and wounded during demonstrations in 1988 in Lhasa and sending the lists to India. He was currently held in Drapchi prison.

6. In its reply, the Government of the People's Republic of China maintains, essentially, that the penalties referred to in the communication of 15 July 1992 were motivated by the fact that demonstrations had developed into a situation bordering on insurrection; according to the Government, acts of violence had been committed against persons and property by militants in

the separatist movement. As to the facts in question, it cites, without going into any particular detail, cases of theft, arson, particularly of public buildings, attacks on government institutions and even shots fired at representatives of the military police and innocent civilians. It stresses that the penalties imposed are thus justified, that they are provided for in the national law of the People's Republic of China and that they were imposed in conformity with that legislation. It adds that they took due account of the seriousness of the offences, a distinction being made between those which entailed a criminal sentence (ranging from five to 19 years' imprisonment) and those which only deserved an administrative penalty in the form of a term of re-education through labour.

7. As regards the consideration of individual cases, the Government of the People's Republic of China in fact distinguishes five categories:

(i) Persons released: Ama Phurbu, released in May 1992 after a term of re-education through labour ordered by the "Lhasa Municipal Committee for Re-education through Labour";

(ii) Persons unknown in the registers of arrests: Karma, Monlam Gyatso and Gyatso;

(iii) Persons not released, but sentenced to a term of re-education through labour: Lhundrup Ganden for three years (followed by nine years' imprisonment) for shouting slogans in prison;

(iv) Persons for whom investigations by the department concerned are under way: Dawa Kyizom, Phurbu Drolma, Migmar, Ngawang Dechoe, Lobsang Tsulrim, Dawa Drolma and Tamdin Sithar.

(v) Persons sentenced to terms of imprisonment by the Lhasa Intermediate People's Court: all the rest, namely, the following 24 persons: Jampa Ngodrup, Lobsang Choejor, Lobsang Yeshe, Lobsang Palden, Drakpa Tsultrim, Lobsang Tashi, Tempa Wangdrak, Tenzin Tsultrim, Ngawang Phulchung, Ngawang Oser, Jamphel Changchub, Kelsang Thutob, Ngawang Gyaltsen, Jampal Lobsang, Ngawag Rigzin, Jampal Monlam, Jampel Tsering, Ngawang Kunga, Yulu Dawa Tsering, Thubten Tsering (1), Ngawang Chamtsul, Tseten Norgyal, Tubten Tsering (2) and Tsering Ngodup.

8. In conclusion, the People's Republic of China contests the allegations describing the cases of detention brought before the Working Group as arbitrary and stresses that in many cases protesters, particularly if they are Buddhists, are not acting within the context of their faith, since the Chinese Constitution does not distinguish between believers and non-believers, but as separatists.

9. In accordance with its methods of work, the Working Group transmitted the information provided by the Government to the source of the communications, asking it for any comments or further observations. In its reply dated 19 February 1993, the source made the following points:

(a) As far as the disturbances connected with demonstrations are concerned, they are due to the fact that exercise of the right to demonstrate is constantly impeded, because demonstrations being almost always forbidden, even if peaceful, the police charge, which leads to the disturbances.

(b) As far as the shooting is concerned, while the source does not deny that it occurred, it points out that it had its origins at the end of the 1980s and that only the forces of law and order have ever been responsible for it, particularly at the demonstrations referred to. It notes that according to all the testimony received, there has never been any allegation that an armed Tibetan was present, just as there is no trace of any criminal proceedings on these grounds in the cases submitted to the Working Group.

(c) As regards the sentences passed on Lobsang Yeshe (12 years), Lobsang Palden (10 years), Drakpa Tsultrim (8 years), Lobsang Tashi (7 years) and Tenzin Tsultrim (5 years), they were trying to exercise their right to demonstrate peacefully; as for Lobsang Choejar (9 years), he had not even taken part physically in the demonstration in question.

(d) The sentence of 3 years' imprisonment passed on Lhundrup Ganden has been extended by a sentence of 9 years, making 12 years altogether, for shouting slogans in prison. His physical state is said to be very alarming, and he is partly paralysed.

(e) Similarly, the 12-year sentence passed on Tempa Wangdrak has been extended for 2 years, apparently because he demonstrated during a visit to the prison by the United States Ambassador.

(f) The so-called separatist activities said to have constituted offences of espionage and betrayal of State secrets (Ngawang Phulchung, Ngawang Oser, Jamphel Changchub, Kelsang Thutob, Ngawang Gyaltsen, Jampal Lobsang, Ngawang Rigzin, Jampel Monlam, Jampel Tsering and Ngawang Kunga) consisted in fact in the exposure of cases of violations of human rights including their disclosure abroad. The persons concerned are said not to have enjoyed even minimum safeguards at their trial. In addition, the charge of crossing the border - and it is not alleged by the Government that it could have been done clandestinely - constitutes a violation of the right to leave any country, including one's own.

(g) In the case of Yulu Dawa Tsering, the separatist activities he is accused of consisted in a conversation with a foreign guest in a private dwelling on the situation in Tibet, with reference to its history and hence its independence.

(h) The same applies to Thubten Tsering, who was also found in possession of reproduced documents.

(i) Tseten Norgyal found himself charged with separatist activities for urging people to reject the political power of the dictatorship of the proletariat and the socialist system.

(j) Finally, in the case of the persons mentioned in paragraph 7 (iv) of the Government's reply as being under investigation by the department

concerned, it is not specified whether the department is looking into the files with a view to replying to the Working Group or conducting inquiries in connection with the arrest. If that were the case, the periods in question would have been relatively brief, whereas most of the persons concerned have been detained for a number of years: Ngawang Dechoe, since April 1991; Dawa Kyizum, since October 1990; Dawa Drolma, since December 1989; Tamdin Sithar and Lobsang Tsultrim, since April 1990; Phurbu Drolm and probably Migmar since December 1990.

(k) As for the others, Tamdin Sithar has had an extension of his 15-year sentence (passed in 1983 for shouting slogans against Deng Xiaoping), first for a period of 4 years, in 1987, for again shouting slogans in prison, and then a second time, in 1991, for 8 years, in connection with the visit of an expert representing Switzerland and the country's ambassador. Ngawang Chamtsul is not even mentioned in the Government's reply.

10. Taking into consideration the reply of the Government and the observations made by the source thereon, the Working Group deems that in the cases under consideration, the right of the persons concerned to freedom of opinion and expression has not been respected.

11. In the light of the above the Working Group decides:

(a) The detention of Jampa Ngodrup, Lhundrup Ganden, Lobsang Choejor, Lobsang Yeshe, Lobsang Palden, Drakpa Tsultrim, Lobsang Tashi, Tempa Wangdrak, Tenzin Tsultrim, Ngawang Phulchung, Ngawang Oser, Jamphel Changchub, Kelsang Thutob, Ngawang Gyaltsen, Jampal Lobsang, Ngawang Rigzin, Jampal Monlam, Jampel Tsering, Ngawang Kunga, Yulu Dawa Tsering, Thubten Tsering (1), Dawa Kyizom, Ngawang Chamtsul, Lobsang Tsultrim, Phurbu Drolma, Migmar, Dawa Drolma, Tseten Norgyal, Thubten Tsering (2), Tamsin Sithar, Ngawan Dechoe and Tsering Ngodup is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 9 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

(b) To keep the cases of Karma, Monlam Gyatso and Gyatso pending for further information, in conformity with paragraph 14 (c) of its methods of work.

(c) To file the case of Ama Phurbu, taking into account her reported release; in conformity with paragraph 14 (a) of its methods of work.

12. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the People's Republic of China to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 9 December 1993.

Decision No. 66/1993 (People's Republic of China)

Communications addressed to the Government of the People's Republic of China on 14 October 1991 and 3 February, 8 April and 6 November 1992.

Concerning: Zhou Lunyou, Peter Liu Guangdong, Su Zhumin, Yang Libo, Father Francis Wang Yijun, Xu Guoxing, Liu Qinglin, Ngawang Chosum, Ngawang Pema, Lobsang Choedon, Phuntsong Tenzin, Pasang Dolma et Dawa Lhanzum (communication of 14 October 1991); Jingyi Wei, Youshen Zhang, Weiming Zhang (communication of 3 February 1992); Zhang Dapeng and Dorje Wangdu (communication of 8 April 1992); and Hu Hai (communication of 6 November 1992), on the one hand, and the People's Republic of China, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communications received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question, (except that of Hu Hai) within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the People's Republic of China. The Working Group transmitted the replies provided by the Government to the sources and received their comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. It was alleged in the communications from the sources, summaries of which were transmitted to the Government, that:

(a) Zhou Lunyou, a poet in his late 30s from Sichuan province, was arrested on 15 August 1989 and held in detention without charge until he was sentenced to three years of re-education through labour in February or March 1990. He was then reportedly transferred to the Ebian Chachang labour camp in Sichuan province. The exact accusations against him were not known to the source, but he was believed to be detained because of his involvement in unofficial publishing of various avant-garde poetry magazines.

(b) Peter Liu Guangdong, the 72-year-old Roman Catholic Bishop of Yixian, who belonged to the "underground church", a group of priests, bishops and lay people that remained loyal to the Vatican and conducted religious activities independently of the Government-recognized church. He was arrested by police on 26 November 1989 and sentenced on 21 May 1990 to three years of re-education through labour. This order was issued by the Labour Re-education Administrative Committee of Baoding City People's Government. It accused

Liu Guangdong of "planning, organizing and forming an illegal organization" and "taking part in illegal activities". He was reported to have been sent to a labour camp near Tangshan city, Hebei province.

(c) Su Zhimin, the 58-year-old Roman Catholic Vicar-General of Baoding, arrested on 17 December 1989 and sentenced on 21 May 1990 by the Baoding City Labour Re-education Administrative Committee to three years of re-education through labour. Su Zhimin, who was reported to have taken part in the Chinese Bishop's Conference held in Sanyuan in November 1989, was accused of "taking part in illegal activities". He was also sent to the labour camp near Tangshan city, Hebei province.

(d) Yang Libo, the 77-year-old Roman Catholic Bishop of Lanzhou, reportedly also a participant in the Chinese Bishop's Conference at Sanyuan. He was arrested by police on 25 December 1989, held for several months for shelter and investigation by police in Zhangye, then sentenced during the summer of 1990, without a trial, to three years of re-education through labour by the Labour Re-education Administrative Committee of Gansu Provincial People's Government. He was accused of disturbing social order and not showing any willingness to reform. It was believed that he was serving his sentence in Lanzhou.

(e) Father Francis Wang Yijun, the 75-year-old Vicar-General of Wenzhou, sentenced by the Labour Re-education Administrative Committee of Wenzhou City People's Government to three years of re-education through labour on 5 February 1990, the day on which he completed his eight-year prison term because of his religious convictions. Reportedly, the order to detain him stated that while serving his eight-year sentence he still refused to repent and accept the Government's "educational liberation", resisted reform and maintained illegal ties to the underground Catholic Church of Wenzhou. The new sentence was specified to run from 20 March 1990 to 19 March 1993.

(f) Xu Guoxing, a 36-year-old Protestant preacher from Shanghai, arrested on 6 November 1989, reportedly for having "seriously interfered and damaged the regular order of religious activities". An order assigning him to three years of re-education through labour was issued by the Shanghai Municipal Public Security Bureau on 1 November 1989. He was accused of having formed in 1986 an independent religious group, the Holy Spirit Society, and of travelling to various areas near Shanghai, in Jiansu, Zhejiang and Anhui provinces, in order to establish branches of this group. The sentence would run from 6 November 1989 to 5 November 1992. Xu Guoxing was sent to carry out the sentence in a labour camp known as the Da Fung farm, in northern Jiangsu province.

(g) Liu Qinglin, a 59-year-old Protestant evangelist in Moguqi, arrested in July 1989 and sent to a labour camp for three years of re-education through labour, reportedly because he had carried out religious activities without official approval. He was also accused of having "indulged in unbridled witch doctor activities". It was believed that he was arrested because of his growing popularity as an independent preacher in Moguqi.

(h) Ngawang Chosum, Ngawang Pema, Lobsang Choedon, Phuntsong Tenzin, Pasang Dolma and Dawa Lhanzum, Tibetan nuns who were sentenced on 11 September 1989 to three years of re-education through labour by the Labour Re-education Administrative Committee of Lhasa. They were accused of "separatist activities" and of "breaking martial-law regulations" for reportedly shouting "long live independent Tibet" at a festival held in Lhasa on 2 September 1989. The source reported that Ngawang Chosum, aged 29, was being detained in Lhasa's Gutsa detention centre. The place of detention of the others was not reported.

(i) Jingyi Wei, Roman Catholic priest at Qiqihar, Heilongjiang province, was reportedly arrested in late 1989 or early 1990. Allegedly, his arrest was part of a crackdown on Roman Catholics who refuse to join the government-sanctioned Catholic Patriotic Association (CPA) and carry out religious activities independently of the CPA. Since September 1990 he was said to be held, without charge or trial, in Heilongjiang province after having been sentenced to three years of re-education through labour by the State Council of the PRC on the Question of Re-education Through Labour, an administrative punishment allegedly imposed without judicial supervision or approval.

(j) Youshen Zhang, aged 64, editor at a Cinefilm factory and Catholic community leader and member of the unofficial Roman Catholic church, was reportedly arrested by officers from Baoding Public Security Bureau at his home in Baoding on 1 March 1991. Allegedly, during a search at the house of a church leader in Baoding, police had found an article written by Youshen Zhang in which he analysed and criticized the government-sponsored Catholic Patriotic Association. The article was said not to have been written for publication. Reportedly, Youshen Zhang was sentenced to three years of re-education through labour. He was said to be held at Hengshui prison, south of Baoding.

(k) Weiming Zhang, aged 52, translator for a factory in Baoding City, Hebei province, was reportedly arrested on 14 December 1990 in Baoding, allegedly for his foreign connections and his active role in the unofficial Catholic church. It was reported that, since his arrest, his family had been denied access to him and had not been informed of the grounds for his detention. He was said to be detained without charge or trial, allegedly under administrative regulations on "shelter and investigation".

(l) Zhang Dapeng, aged 68, Roman Catholic lay leader, was arrested by Public Security (police) officers from Baoding City on 13 December 1990 at his home in Baoding City, Hebei province, allegedly under administrative regulations providing for the form of administrative detention known as "shelter and investigation". He was said to be held in detention without either criminal charges or an administrative detention order having been issued against him. It was alleged that Zhang Dapeng's arrest and detention stemmed from his activities in the unofficial Roman Catholic church in Baoding and his contacts with other Catholics who were also arrested in December 1990 during what was reported as a crackdown in Hebei Province on Roman Catholics who remained loyal to the Vatican and refused to join the officially sanctioned Catholic church.

(m) Dorje Wangdu (Duoji Wangdui), aged 33, Tibetan, arrested without a warrant on 22 April 1991 by agents of the Public Security Department of Lhasa Municipality, reportedly under procedures for "shelter and investigation" (shourong shencha). On 26 September 1991, the "Re-education through Labour" Administrative Committee of the Lhasa Municipal People's Government was reported to have issued a decision to impose a three years term of "re-education through labour" against Dorje Wangdu, who was said to be held at Rawa Labour Re-education camp since 28 September 1991. Allegedly, the official notice indicating his term of detention accused him of the following "illegal activities": having advised acquaintances to wear Tibetan clothes during the period of the Kalashakra Buddhist initiation ceremony held by the Dalai Lama in late 1990 in India; having distributed, on 23 February 1991, symbols of personal protection (cords blessed by a high lama) to monks in Ganden monastery; having made copies of "reactionary leaflets" carrying the red seal of Muru monastery and advised that these should be displayed "on relevant occasions". Allegedly, "reactionary leaflets" which had circulated in Sera monastery in Lhasa had also been found at Dorje Wangdu's home.

(n) Hu Hai, a peasant aged 58, of Liuzhuang, Henan province. He was placed under house arrest on 15 May 1991, charged on 28 May 1991 with "disturbing social order" and sentenced on 6 November 1991 to three years' imprisonment plus deprivation of political rights for one additional year. He was currently held at the 17th Labour Reform Detachment in Xinxian, Henan province. According to the source, Hu Hai was given a prison sentence for taking part together with other peasants in petitions against local taxes which the peasants described as excessive and arbitrary, imposed in 1990. He was reportedly charged with "disturbing social order" under article 158 of the Criminal Law, on the grounds that he had "incited the masses" to complain to the authorities, "unreasonably causing trouble and seriously disrupting the functioning of government work". The source added that article 41 of the Constitution of the People's Republic of China guaranteed Chinese citizens the right to petition higher authorities against abuses of power, neglect of duty or illegal actions taken by State functionaries. Hu Hai reportedly appealed against the verdict to the Intermediate People's Court of Xinxiang city, Henan province, but the Court rejected the appeal and upheld the original sentence.

6. In its replies, the Government of the People's Republic of China confirms that cases (a) to (g) and (i) to (m) concern persons sentenced to three-year terms of re-education through labour. For case (h), this information, given by the source, is not confirmed by the Government in its reply. The reasons most often cited by the Government are the following:

Cases (a) and (m): Illegal activities. The source states that in case (a), this meant publication by a poet of unofficial avant-garde poetry reviews; in case (m) the offence was wearing traditional Tibetan dress on the occasion of a celebration.

Cases (b) to (f), (i), (k) and (l): Setting up an anti-State organization, not registered. According to the explanations given by the source, all these cases concern Catholics, particularly former priests who refuse to join the official Catholic Church. They come together with others who have remained loyal to the Vatican. According to the source the

activities they are accused of take the following forms: attending an unofficial meeting of bishops (cases (c) and (d)); calling for a demonstration (case (c)); printing seditious texts, persisting in clandestine religious activities and refusing to reform (case (e)).

Case (j): A Catholic who wrote a critical article against the official Church (discovered during a search and probably never published).

Case (h): Separatist activities and commission of offences, in particular by taking part in demonstrations forbidden under martial law, according to the Government of the People's Republic of China. According to the source, one of the charges was shouting the slogan "Long live independent Tibet" at a festival.

Case (m): Illegal activities, according to the Government, without further details. According to the source, this means wearing traditional dress on the occasion of the celebration of a ceremony presided over by the Dalai Lama in India in 1990.

Case (n): No reply by the date of this decision. He is apparently still deprived of his freedom.

7. As regards the safeguards offered by the procedure of sentencing people to re-education through labour, the Government of the People's Republic of China gave the following explanations:

> "The statutory basis for China's system of education through labour is the Decision on Education through Labour, ratified by the seventy-eighth session of the Standing Committee of the 1st National People's Congress and proclaimed by the State Council on 3 August 1975; the supplementary regulations on education through Labour, ratified by the twelfth session of the Standing Committee of the 5th National People's Congress and proclaimed by the State Council on 5 December 1979; and the Provisional Procedures for Education through Labour, authorized by the State Council on 21 January 1982. These statutes prescribe the nature, orientation, mandate and review requirements of education through labour. They also provide for the accommodation, supervision and training of inmates, thereby ensuring that it will be exercised along rational and legal lines. Education through labour is an administrative measure of compulsory reform, conceived by China to prevent and reduce juvenile delinquency and safeguard social order. It is therefore an administrative, rather than penal, sanction. The subject of such sanction is usually one who has repeatedly and persistently transgressed against social order, or who, by the nature of the felony committed, is better suited to be reformed than to be put behind bars.
>
> "Education through labour is subject to decision and review by special commissions set up by the local governments of provinces, autonomous regions and municipalities. The subject and the subject's family are given notification of the Commission's decision and the basis and duration of such administrative sanction. The subject is required to sign the notification. Objection to a decision can be made in an appeal

either to the Commission itself, for review within 10 days of receiving notification, or directly to a People's Court according to article 11 of the Administrative Procedural Law of the People's Republic.

"The law provides that a commission composed of local civic, public security and labour leaders shall oversee the administration of education through labour under the supervision of the People's Procuratorate. Those who are to be educated are sent to an institution set up for this purpose. The emphasis of the institution is on reform. It is accomplished strictly according to law in a humane, civilized and scientific manner. Each institution is equipped with a clinic staffed by professional medical personnel. While serving his term, an inmate is expected to divide his time between collective labour and vocational training aimed at his eventual reintegration into society.

"The policy of the State is to give the subject of education a new chance in life without discrimination. Once the subject has completed his term, he returns to his original place of residence. He will receive social assistance in finding employment or enroling in a school. The Chinese authorities have discovered through practice that education through labour is an effective means of maintaining social order in China, one appropriate to the special character of the Chinese nation. Such a system is completely different from arbitrary detention."

8. The Working Group considered the question of re-education through labour in its Deliberation 04, (E/CN.4/1993/24, Chap.II). In its conclusions the Working Group determined that "The case of a coercive administrative measure whose purpose is not only occupational rehabilitation, but mainly political and cultural rehabilitation through self criticism" was among "cases where the measure of deprivation of freedom is inherently arbitrary in character".

9. In the light of the above the Working Group decides:

The detention of Zhou Lunyou, Peter Liu Guangdong, Su Zhumin, Yang Libo, Father Francis Wang Yijun, Xu Guoxing, Liu Qinglin, Ngawang Chosum, Ngawang Pema, Lobsang Choedon, Phuntsong Tenzin, Pasang Dolma et Dawa Lhanzum, Jingyi Wei, Youshen Zhang, Weiming Zhang, Zhang Dapeng and Dorje Wangdu and Hu Hai, is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19 and 21 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of the above-mentioned persons to be arbitrary, the Working Group requests the Government of the People's Republic of China to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 9 December 1993.

**Decision No. 67/1993 (Nigeria)**

Communication addressed to the Government of Nigeria on 13 August 1993.

Concerning: Beko Ransome-Kuti, Femi Falana, Chief Gana Fawehinzmi and Alhaji Hamidi Adedibu, on the one hand, and the Federal Republic of Nigeria, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Nigeria. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.

5. The communication submitted by the source, a summary of which was forwarded to the Government, concerned three human rights activists: Beko Ransome-Kuti, aged 52, doctor, Chairman of the Campaign for Democracy and President of the Committee for the Defence of Human Rights; Femi Falana, lawyer, member of the Campaign for Democracy, President of the National Association of Democratic Lawyers (NADL), (whose case had already been submitted by the Working Group on Arbitrary Detention to the Nigerian Government by letter dated 6 November 1992, for which no reply has been received); and Chief Gani Fawehinmi, aged 55, lawyer, member of the Campaign for Democracy. They were reportedly arrested on 7 July 1993, after having been arrested and released on several occasions in 1993 and in previous years. They were first held under the State Security (Detention of Persons) Decree No. 2 of 1984, and on 12 July 1993 they were charged before a magistrate's court in Abuja with sedition and conspiracy under the Penal Code (Northern Region), charges carrying a maximum penalty of seven years' imprisonment. On 15 July they were reportedly refused bail and were remanded in prison.

The arrest of the three above-mentioned human rights activists and the charges filed against them were believed to be linked to their activity of protest over the Government's decision not to announce the results of the presidential election of 12 June 1993.

It was alleged that since 16 July 1993 they have been denied all visits from families and lawyers.

A fourth man, Alhaji Lamidi Adedibu, a prominent member of the Social Democratic Party (SDP), was reportedly arrested on 20 July 1993 in Ibadan, Oyo State, after he called for a boycott of new presidential elections ordered by President Ibrahim Babangida for 14 August.

6. According to information issued later by the same source, Beko Ransome-Kuti, Femi Falana and Chief Gani Fawehinmi were released unconditionally on 29 August 1993, but it was not clear whether Alhaji Lamidi Adedibu remained in detention or whether he had also been released. The source indicated that the four persons had been detained under the provisions of the State Security (Detention of Persons) Decree No. 2 of 1984, which permitted administrative detention for renewable periods of six weeks, thus effectively providing for indefinite detention without charge or trial of anyone suspected of threatening national security.

7. The Government, in its reply, confirmed the fact that the four persons had been detained, without explaining the circumstances of their arrest and detention. It merely indicated that their arrests were a result of subversive activities with the aim of undermining the security of the State. The Government subsequently informed the Working Group of the release of the four persons, without indicating the date on which they were released. The Government did not dispute the version put forward by the source regarding the cause, and the legal basis of the detentions. Moreover, it did not contest the allegation that the four persons had been detained in order to prevent them carrying out activities of protest over the Government's decision not to announce the results of the presidential elections of 12 June 1993, or that the reason of the detention was having called for a boycott of new presidential elections scheduled for 14 August 1993. Furthermore, the Government did not contest that the legal basis of the detentions was the State Security Decree No. 2 of 1984.

8. It appears from the facts described above that the detention of Beko Ransome-Kuti, Femi Falana and Chief Gani Fawehinmi, from 7 July to 29 August 1993, and that of Alhaji Lamidi Adedibu from 20 July until his release on an unspecified date, had their origin in the fact that these persons had exercised their right to freedom of opinion and expression, guaranteed by article 19 of the Universal Declaration of Human Rights, and article 19 of the International Covenant on Civil and Political Rights and that they had exercised their right to freedom of association, guaranteed by article 20 of the Universal Declaration of Human Rights, and article 22 of the International Covenant on Civil and Political Rights; furthermore, it was not alleged or reported anywhere that by doing so they had resorted to violence, or that they had threatened in any way, in contravention of the law, national security, public safety, public order or public health or morals, as well as the rights or reputations of others, as provided by article 29(2) of the Universal Declaration of Human Rights, and by articles 8, 9 and 10 of the International Covenant on Civil and Political Rights. It should further be noted that the resort to Presidential Decree No. 2 of 1984, which has the characteristics of an emergency law, allows violations of the rights guaranteed by articles 8, 9 and 10 of the Universal Declaration of Human Rights, and article 9 of the International Covenant on Civil and Political Rights, to occur.

9. In the light of the above the Working Group decides:

The detention of Beko Ransome-Kuti, Femi Falana, Chief Gani Fawehinmi and Alhaji Lamidi Adedibu, is declared to be arbitrary being in contravention of articles 8, 9, 10, 19 and 20 of the Universal Declaration of Human Rights, and articles 9, 19 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

10. Consequent upon the decision of the Working Group declaring the detention of Beko Ransome-Kuti, Femi Falana, Chief Gani Fawehinmi and Alhaji Lamidi Adedibu to be arbitrary, and taking into account their release, the Working Group requests the Government of Nigeria to take note of its decision and in the light thereof bring its laws into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 10 December 1993.

Decision No. 1/1994 (Syrian Arab Republic)

Communication addressed to the Government of the Syrian Arab Republic on 12 November 1993.

Concerning: Mustafa Khalifa, on the one hand, and the Syrian Arab Republic, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of the Syrian Arab Republic. The Working Group transmitted the reply provided by the Government to the source, which has provided the Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. The Working Group considers that:

(a) According to the allegation, Mustafa Khalifa has been detained without charge or trial since 1982 for his involvement with the Communist Action Party (PCA), a peaceful association which claims the exercise of democratic freedoms. He is being held in Saidnaya prison near Damascus. He is suffering from health problems and has not been given proper medical attention. It is maintained that his human rights to personal freedom, freedom of expression and opinion, association and political participation and to a fair trial have been violated;

(b) The communication having been transmitted to the Government, the latter informed the Working Group that Mr. Khalifa had been sent for trial in accordance with a decision of 13 April 1992 on the charge of membership of a terrorist group that incites and engages in violence against citizens. He was also accused of abducting citizens, detaining them at secret locations and subjecting them to physical and psychological pressures and mutilation;

(c) The Government reply does not indicate: the group to which Mr. Khalifa supposedly belonged; the reason why it was considered to be a terrorist group; what persons had allegedly been abducted by the organization accused of inciting violence; what role Mr. Khalifa had allegedly played in that organization; on what dates the alleged abductions occurred; what physical and psychological pressure were allegedly inflicted by Mr. Khalifa; what the secret locations were in which the abducted persons were allegedly

detained; the reason why he was sent for trial after 10 years of deprivation of freedom; the authority which ordered the detention without trial for all that time; the legal basis of the 10-year detention without trial; and the court that is to judge the case;

(d) The only definite fact that emerges from the Government reply is that Mr. Khalifa has indeed been detained without trial since 1982;

(e) In these circumstances, the Working Group is forced to conclude that the sole reason why Mr. Khalifa has already been detained for 12 years is his active membership - admitted by the source - of the Communist Action Party;

(f) The more than 10 years' delay in starting the trial is such a serious violation of article 14 of the International Covenant on Civil and Political Rights and of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment that it confers on the deprivation of freedom an arbitrary character.

6. In the light of the above the Working Group decides:

The detention of Mustafa Khalifa is declared to be arbitrary being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights, to which the Syrian Arab Republic is a Party, and falling within category III of the principles applicable in the consideration of the cases submitted to the Working Group.

7. Consequent upon the decision of the Working Group declaring the detention of Mustafa Khalifa to be arbitrary, the Working Group requests the Government of the Syrian Arab Republic to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 17 May 1994.

Decision No. 2/1994 (Uzbekistan)

Communication addressed to the Government of Uzbekistan on 20 September 1993.

Concerning: Pulat Akhunov, on the one hand, and the Republic of Uzbekistan, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the case of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Uzbekistan. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. According to the communication, a summary of which was transmitted to the Government of Uzbekistan, Pulat Akhunov, aged 31, teacher of biology, a former deputy of the USSR Supreme Soviet and deputy Chairman of the opposition Birlik movement, was arrested in July 1992 and tried in December in Andizhan Regional Court for "malicious hooliganism", for which he was sentenced to 18 months in a labour camp. While serving this sentence, he was charged with illegal possession of narcotics and with assaulting a prison guard, and on 17 August 1993 he was sentenced to three years in a labour camp. At his second trial, Mr. Akhunov's defence lawyer was allegedly obstructed from calling as defence witnesses prison inmates who allegedly witnessed an incident, on 5 February 1993, when a prison guard attempted to plant a package in a pocket of Mr. Akhuno's clothing while the latter was taking a shower. According to the source Pulat Akhunov may have been imprisoned as a punishment for his opposition political activities, and the charges brought against him by the authorities may have been fabricated.

6. It is evident from the above allegations that the detention of Pulat Akhunov and his second sentence in August 1993 to 3 years' prison term, in prolongation of his original sentence to 18 months' term in July 1992, are due to the fact that he freely exercised his right to freedom of opinion and expression guaranteed by article 19 of the Universal Declaration of Human

Rights and by article 19 of the International Covenant on Civil and Political Rights, as well as his right to peaceful association guaranteed by article 20 of the Universal Declaration of Human Rights and by article 20 of the International Covenant on Civil and Political Rights.

7. Moreover, the allegations made by the source might also lead to the conclusion that the trial of Pulat Akhunov on 17 August 1993 and his resultant detention were not in keeping with international law, and more particularly with article 9 of the Universal Declaration of Human Rights and article 14, paragraph 3, subparagraph (e), of the International Covenant on Civil and Political Rights. However, in view of the conclusions formulated in paragraph 6, the Working Group did not consider whether the non-observance of the international provisions relating to the right to a fair trial was such that it conferred on the detention of Pulat Akhunov an arbitrary character.

8. In the light of the above the Working Group decides:

The detention of Pulat Akhunov is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19 and 22 of the International Covenant on Civil and Political Rights, to which the Republic of Uzbekistan is a Party as a former Republic of the USSR, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of Pulat Akhunov to be arbitrary, the Working Group requests the Government of Uzbekistan to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 17 May 1994.

Decision No. 3/1994 (Morocco)

Communication addressed to the Government of Morocco on 3 August 1993.

Concerning: Ahmed Belaichi, on the one hand, and the Kingdom of Morocco, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of a case of alleged arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case within ninety (90) days of the transmittal of the letter by the Working Group.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government of Morocco. The Working Group transmitted the reply of the Government to the source and received their comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. The communication, a summary of which was forwarded to the Government, alleges that Ahmed Belaichi, a teacher, was arrested on 20 November 1992 in his house in al-Hoceima by police officers. It states that the police carried out a search at the time of his arrest and confiscated manuscripts, books and poems. Mr. Belaichi was brought to Casablanca prison. He was accused of having "disseminated reports undermining the morale of the army" (arts. 263 and 265 of the Criminal Code) and of having breached the Press Code (arts. 42 and 43 of the Code). He was tried by the Casablanca Court of First Instance, which convicted him on 23 December 1992 and sentenced him to a three-year term of imprisonment and a fine of 1,000 dirhams.

6. According to the source, Mr. Belaichi's arrest followed shortly after he had commented, on 11 November 1992, on the Moroccan television channel "2M International", on the Moroccan policy with regard to Moroccans and other Africans crossing the strait between Morocco and Spain in order to go to Europe. The source adds that the arrest and imprisonment of Mr. Belaichi for having commented on the policy of the Government and on possible violations of human rights by the Government constitute a violation of his right to freedom of expression that is guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights to which the Kingdom of Morocco is a party.

7. The Government of Morocco, in its recapitulation of the various phases of the case, which it provided to the Working Group, expresses the view that the judicial proceedings against and conviction of Ahmed Belaichi were well

founded and consistent with article 19, paragraph 3, of the International Covenant on Civil and Political Rights. The Government also considers that the trial was properly conducted in a manner consistent with the international norms guaranteeing a fair trial.

8. In its comments on the reply of the Government, the source considers that the statements for which Ahmed Belaichi was convicted constitute no more than the free exercise of the right to freedom of expression guaranteed by article 19 of the above-mentioned Covenant. The source also considers that the procedure followed was vitiated by serious irregularities, such as a posteriori modification of the charge so as to permit preventive detention from the start of the proceedings, something which, according to the source, is not possible if the charge is stated at the outset. A further irregularity was the rejection of the request for postponement made by the defence counsel in the appeal proceedings. The source therefore considers that Ahmed Belaichi's right of defence was violated and that he was unable to present his arguments to the higher court.

9. Article 19 of the International Covenant on Civil and Political Rights guarantees the right to freedom of opinion and of expression, including freedom to impart ideas of all kinds, in any form or through any media. The question is whether the restrictions of this freedom introduced by the national law are consistent with the terms of paragraph 3 (b) of the said article. The Government of Morocco confines itself to stating this to be the case without explaining the grounds for the restriction of freedom of expression. Failing to see how, in the present case, this restriction might be based on respect of the rights or reputations of others (subpara. (a) of para. 3 of art. 19), or on the protection of public order or of public health or morals (subpara. (b) of the same para.), the Working Group considered whether, in their practical application, articles 262 and 265 of the Moroccan Criminal Code and articles 35, 42 and 72 of the Press Code, as legislation restricting freedom of expression, might or might not be consistent with the terms of article 19 of the above-mentioned Covenant providing for the protection of national security.

10. The Working Group wondered whether, in a situation where there was no denying the presence of the Moroccan army in the north of Morocco and its operations being in connection with migration to Spain, the statements that the army "is committing abuses when it moves in an unreasonable fashion, destroying everything in its path", that it "is carrying out security operations" and that "it is moving boats by helicopter and then destroying them", can be regarded as reports or comment expressing a critical view of the situation in the north of Morocco. The Working Group considers that the statements attributed to Ahmed Belaichi constitute only critical comment. Furthermore, the Government of Morocco, in its reply, referred to these statements as "falsified reports" without further clarification.

11. The Working Group considers that national law, whatever its nature, cannot impose restrictions on the right to freedom of expression of such scope as to make unlawful the three statements attributed to Ahmed Belaichi. The Working Group considers that these statements cannot be covered by any restriction provided for in article 19, paragraph 3, of the International Covenant on Civil and Political Rights.

12. The facts as described above indicate that the detention of Ahmed Belaichi since 20 November 1992 and his trial, in which he was sentenced to three years' imprisonment, are solely the consequence of the free exercise by Ahmed Belaichi of his right to freedom of opinion and of expression that is guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

13. In the light of the above, the Working Group decides:

> The detention of Ahmed Belaichi is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, to which the Kingdom of Morocco is a party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

15. Consequent upon the decision of the Working Group declaring the detention of Ahmed Belaichi to be arbitrary, the Working Group requests the Government of Morocco to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 17 May 1994.

## Decision No. 4/1994 (Zaire)

Communication addressed to the Government of Zaire on 12 November 1993.

Concerning: Kalala Mbenga Kalao and Chimanuka Ntagaya-Ngabo, on the one hand, and the Republic of Zaire, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that to date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, it is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Zaire. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The facts of the cases in question are as follows:

(a) Kalala Mbenga Kalao, publisher and journalist of the opposition newspaper "La tempête des Tropiques" is alleged to have been arrested on 25 August 1993 in the Lemba district of Kinshasa by members of the Civil Guard and to have been beaten in the course of his arrest. It is alleged that he was first held at the Institut supérieur des bâtiments (offices and detention centre of the Civil Guard) and to have later been transferred to a detention centre of the Service d'Action et de Renseignements Militaires (SARM) where he is alleged to be still in solitary confinement. The source alleges that Mr. Kalao was neither charged nor brought before a judge.

The cause of the arrest and detention of Kalala Mbenga Kalao is alleged to be the fact that, in three recent issues, his newspaper published the identity, unit, rank and origin of high-ranking officers of the Armed Forces of Zaire. According to the source, statistics show that 70 per cent of the Zairian officers belong to the same ethnic group, the Ngabandi, as President Mobutu Sese Seko.

(b) It is alleged that Chimanuka Ntagaya-Ngabo, a member of the Tourist Bureau of Kasha, Bukavu, Southern Kivu Province and a member of the opposition Christian Social Democratic Party, was arrested on 23 October 1993 at Bukavu. It is alleged that he was transferred the next day to Luzumo prison and later to Makala prison, where he is said now to be held.

The source alleges that the arrest was due to the recent publication of a statement opposing the monetary measures decided upon by President Mobutu. According to other sources the arrest formed part of pressures being exerted on leaders and members of opposition parties.

6. According to the source, the very difficult conditions in which the above-named persons may be held is a matter for concern because, in the prisons of Zaire and particularly those under the authority of the security forces, the inmates are subjected to severe physical and psychological pressure and are deprived of food, water and the most basic medical care.

7. The facts, as set out above, indicate that the only ground for the detention of Kalala Mbenga Kalao and Chimanuka Ntagaya Ngabo is the fact that they belong to the Zairian opposition and the fact that they freely and peacefully exercised their right to freedom of opinion and expression by voicing criticism of the policy of President Mobutu, a right guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and by articles 19 and 22 of the International Covenant on Civil and Political Rights.

8. In the light of the above the Working Group decides:

> The detention of the above-mentioned persons is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights, to which Zaire is a party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

9. The Working Group having declared the detention of these persons to be arbitrary, the Working Group requests the Government of Zaire to take the necessary steps to remedy the situation in order to bring it into conformity with the provisions and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 18 May 1994.

## Decision No. 5/1994 (Guinea-Bissau)

Communication addressed to the Government of the Republic of Guinea-Bissau on 20 September 1993.

Concerning: Fô Na Nsofa, Nimle Na Inghada, Buan Na Lona, Mansoa Na Nkassa and Ntampassa Na Bion, on the one hand, and the Republic of Guinea-Bissau, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the cases in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, the latter is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of decision No. 43/1993.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Guinea-Bissau. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The communication, a summary of which has been transmitted to the Government of Guinea-Bissau, alleges that the five above-named persons have been held in solitary confinement, without having been charged, in the police station in the village of Banta, in southern Guinea-Bissau, since their arrest in June and early July 1993. They have been denied the right of access to counsel and their relatives have not been allowed to visit them. It is alleged that they were beaten by the police at Banta. They are said to be members of the opposition party "Resistencia da Guiné-Bissau Movimento Bafatá" (RGB-MB), other members of which are said to have been subjected in the past to arbitrary detention and other forms of harassment. According to the source, Fô Na Nsofa was arrested at his home in the village of Banta, Buba sector, on 23 June in connection with the possession of a hand-gun which he had owned for several years. The police was made aware of the existence of this gun when the son of Fô Na Nsofa (whose age was not indicated but who is said to be mentally deficient) was seen carrying it. It is alleged that Fô Na Nsofa was beaten following his arrest and apparently forced to name his "accomplices" in the crime which the authorities suspected him of having committed. This is said to have led to the later arrest of Nimle Na Inghada and Buan Na Lona on 24 June 1993 and of Mansoa Na Nkassa and Ntampassa Na Bion in the week commencing 4 July.

6. The facts, as described above, indicate that the sole ground for the detention without charge and the holding in solitary confinement of Fô Na Nsofa, Nimle Na Inghada, Buan Na Lona, Mansoa Na Nkassa and Ntampassa Na Bion is their membership of an opposition party, while all they did was freely and peacefully exercise their right to freedom of opinion, expression and association, a right guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights.

7. In the light of the above, the Working Group decides:

> The detention of the above-named persons is declared to be arbitrary, being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights and of articles 19 and 22 of the International Covenant on Civil and Political Rights and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

8. Consequent upon the decision of the Working Group declaring the detention of the persons in question to be arbitrary, the Working Group requests the Government of Guinea-Bissau to take the necessary steps to remedy the situation in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 18 May 1994.

## Decision No. 6/1994 (Bahrain)

Communication addressed to the Government of Bahrain on 12 November 1993.

Concerning: Mr. Sayed Alawi Sayed Mohsen Sayed Neamah al Alawi, on the one hand, and the State of Bahrain, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the Government concerned has informed the Group (which fact has been confirmed by the source) that the above-mentioned person is no longer in detention.

4. In the context of the information received by the Working Group, having applied its mind to the available information, it is of the opinion that no special circumstances warrant the Group to consider the nature of the detention of the person released.

5. The Working Group, without prejudging the nature of the detention, decides to file the case of Mr. Sayed Alawi Sayed Mohsen Sayed Neamah al Alawi in terms of paragraph 14 (a) of its Methods of Work.

Adopted on 18 May 1994.

Decision No. 7/1994 (Viet Nam)

Communication addressed to the Government of Viet Nam on 3 August 1993.

Concerning: Doan Viet Hoat, Pham Duc Kham, Nguyen van Thuan, Pham Cong Cahn, Pham Kim Thanh, Nguyen Quoc Minh and Huyin Xay, on the one hand, and the Socialist Republic of Viet Nam, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it, and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with concern that till date no information has been forwarded by the Government concerned in respect of the case in question. With the expiration of more than ninety (90) days of the transmittal of the letter by the Working Group, the latter is left with no option but to proceed to render its decision in respect of the cases of alleged arbitrary detention brought to its knowledge.

3. (Same text as para. 3 of decision 43/1993.)

4. In the light of the allegations made, the Working Group would have welcomed the cooperation of the Government of Viet Nam. In the absence of any information from the Government, the Working Group believes that it is in a position to take a decision on the facts and circumstances of the case, especially since the facts and allegations contained in the communication have not been challenged by the Government.

5. The cases in question were reported to the Working Group as follows:

(a) Doan Viet Hoat, a teacher of English at the University of Agriculture and Forestry of Hochiminh-ville, was arrested on 17 November 1990 at his home in Hochiminh-ville. He is alleged to have been the leader of an illegal organization named Die Dan tu Do (Freedom Forum), founded in June 1989, that is responsible for the publication of newspapers critical of the Government. Seven other persons belonging to the same organization are alleged to have been arrested during the months of November and December 1990. At a public trial which took place on 29 and 30 March 1993, all of these persons were sentenced to long terms of imprisonment: Doan Viet Hoat to 20 years; Pham Duc Kham to 16 years; Nguyen Van Thuan to 12 years and five other accused whose identity was not communicated by the source to prison terms ranging from eight-and-a-half months to seven years. Doan Viet Hoat had already been held without trial for 12 years, from 1976 to 1988, seemingly on account of his political opinions.

(b) According to the source, Doan Viet Hoat and the seven other persons were accused of having engaged in activities "aimed at overthrowing the People's Government", in the terms of article 73 of the Vietnamese Criminal Code. The source adds that the said article 73 makes no distinction between armed acts or acts of violence which might threaten national security, on the

one hand and the peaceful exercise of the rights of freedom of expression and association on the other. Consequently, the eight above-mentioned persons might have been convicted and imprisoned on account of their peaceful activities or their opinions. Furthermore, the source states that, in the case of the eight above-mentioned persons, the principle of presumption of innocence, guaranteed by article 14, paragraph 2, of the International Covenant on Civil and Political Rights, by principle 36 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment and by article 11 of the Code of Criminal Procedure of Viet Nam, was violated by the publication of the accusations by the official media prior to the trial.

(c) Pham Cong Canh, Pham Kim Thanh, Nguyen Quoc Minh and Huyin Xay, all four of whom are associated with the Vietnamese cinema industry, were sentenced on November 1992 to prison terms for having associated themselves with a cinema company "Chun Sing Film" (CSF) of Hong Kong, in order to produce a film whose content was held by the authorities to be defamatory and anti-socialist. According to the source, Pham Cong Canh and Pham Kim Thanh were sentenced to three-year prison terms for "the crime of having intentionally violated principles, policies and rules concerning the economic management of the State, and of having caused grave consequences", an offence under Section 1, article 174, of the Criminal Code of Viet Nam, and for "the crime of having caused grave consequences through negligence", under article 220 of the Criminal Code. Nguyen Quoc Minh is alleged to have been sentenced to a two-year prison term for "the crime of having caused grave consequences through negligence" under article 220 of the Criminal Code. Huyin Xay is alleged to have been sentenced to imprisonment for 16 months for "the crime of anti-socialist propaganda", under article 82, paragraph 1, of the Vietnamese Code of Criminal Procedure. It is alleged that, following his release he will be assigned to residence in his home town for one year. According to the source, these persons were convicted and imprisoned for exercising their right to freedom of expression, that is guaranteed by article 19 of the International Covenant on Civil and Political Rights, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of the person's choice.

6. It should be noted that the Working Party declared the detention of Doan Viet Hoat to be arbitrary in its decision No. 15/1993.

7. Pham Duc Kham and Nguyen Van Thuan, who were sentenced at the same time as Doan Viet Hoat, were accused, as he was, of having engaged in activities "aimed at overthrowing the People's Government". As the source notes, this accusation, which could not be more vague, does not distinguish between armed acts of violence such as may threaten national security and the peaceful exercise of the rights to freedom of expression and association. The Working Group consequently believes that the persons in question are in fact being detained solely on account of their opinions, in violation of the rights guaranteed by articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 22 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Viet Nam is a party.

8. As regards Pham Cong Canh, Pham Kim Thanh, Nguyen Quoc Minh and Huyin Xay, the Working Group considers that the production of a film, even in association with a foreign company, is no more than the exercise of freedom of expression, a right guaranteed by article 19 of the Universal Declaration of Human Rights and by article 19 of the International Covenant on Civil and Political Rights, particularly since they are not reported to have, by so doing, impaired respect of the rights or reputations of others or the protection of national security or of public order, or of public health or morals.

9. In the light of the above the Working Group decides:

> The detention of Pham Duc Kham, Nguyen van Thuan, Pham Cong Canh, Pham Kim Thanh, Nguyen Quoc Minh and Huyin Xay is declared to be arbitrary being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights, and articles 19 and 22 of the International Covenant on Civil and Political Rights, to which the Socialist Republic of Viet Nam is a party, and falling within category II of the principles applicable in the consideration of the cases submitted to the Working Group.

9. Consequent upon the decision of the Working Group declaring the detention of the persons in question to be arbitrary, the Working Group requests the Government of the Socialist Republic of Viet Nam to take the necessary steps to remedy the situation, in order to bring it into conformity with the norms and principles incorporated in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights.

Adopted on 18 May 1994.

## Decision No. 8/1994 (Mexico)

Communication addressed to the Government of Mexico on 18 August 1993.

Concerning: Gerardo Rubén Ortega Zurita and José Cruz Reyes Potenciano, on the one hand, and Mexico, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question.

3. The Working Group also notes that the Government concerned has informed the Group that the above-mentioned persons are no longer in detention.

4. In the context of the information received, the Working Group, having considered the available information, is of the opinion that no special circumstances warrant consideration by the Group of the nature of the detention of the persons released.

5. The Working Group, without prejudging the nature of the detention, decides to file the cases of Gerardo Rubén Ortega Zurita and José Cruz Reyes Potenciano in accordance with the terms of paragraph 14 (a) of its Methods of Work.

Adopted on 18 May 1994.

## Decision No. 9/1994 (Croatia)

Communication addressed to the Government of Croatia on 30 April 1993.

Concerning: Mr. Nenad Miskovic, on the one hand, and Croatia, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.

2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the case in question within 90 days of the transmittal of the letter by the Working Group.

3. The Working Group further notes that the Government concerned has informed the Group that the above-mentioned person is no longer in detention.

4. In the context of the information received by the Working Group, having applied its mind to the available information, it is of the opinion that no special circumstances warrant the Group to consider the nature of the detention of the person released.

5. The Working Group, without prejudging the nature of the detention, decides to file the case of Mr. Nenad Miskovic in terms of paragraph 14 (a) of its Methods of Work.

Adopted on 19 May 1994.

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